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**Before the
Federal Communications Commission
Attention: Marlene H. Dortch, Commission Secretary
445 12th Street, S.W.
Washington, DC 20554**

In the Matter of Petition of NextG Networks of California, Inc., for a Declaratory Ruling that its Service is Not Commercial Mobile Radio Service	WC Docket No. 12-37
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City of Scottsdale, Arizona's Comments to the Petition of NextG Networks of California, Inc., for a Declaratory Ruling that its Service is Not Commercial Mobile Radio Service

The City of Scottsdale, Arizona, hereby submits its Comments to the Petition of NextG Networks of California, Inc., for a Declaratory Ruling that its Service is Not Commercial Mobile Radio Service. The City requests that the Commission declare that NextG's services are Commercial Mobile Radio Services ("CMRS") when NextG installs its DAS systems. If the Commission does not conclude that NextG's DAS service is CMRS, the City asks this Commission to recognize that NextG is not a provider of telecommunication services but rather only an infrastructure provider for the CMRS companies which actually provide telecommunication services.

I. Introduction.

While NextG's Petition certainly raises an issue within the purview of this Commission's jurisdiction, the determination of the litigation in Arizona state court does

not absolutely depend on a declaratory ruling from this Commission.¹ The question pending in the Arizona state court litigation involves an interpretation of state law with a single aspect of that law incorporating by reference federal provisions relating to CMRS.² If this Commission elects to take action on NextG's petition, it may or may not be determinative of the state court litigation.³

Accordingly, while this Commission is carrying out its congressionally delegated function, it should remain true to the scope of that duty. The Commission's duty, of course, is not to strain the interpretation of federal law simply to accommodate a single company's desire to avoid paying for the use of the City of Scottsdale's rights-of-way. Instead, this Commission should make a thorough examination of NextG's service, however it is described, and apply the statutes and rules in a straightforward manner without regard to what litigation may be occurring in state courts.

Toward that end, this Commission will have to initially invest a substantial effort just making a determination of what services NextG offers and how. As will be seen below, the manner in which NextG describes its services changes on a regular basis depending on what legal advantage it may be attempting to gain.⁴ This fluctuating

¹ In the absence of a determination by this Commission, the Arizona state court would simply make its own determination of whether or not NextG is a CMRS within the meaning of the FTA and this Commission's rules enacted thereunder.

² NextG originally asserted claims against the City of Scottsdale arising under §253 of the FTA. After realizing those claims were poorly asserted, NextG voluntarily dismissed those claims.

³ There are a number of corollary issues being litigated in the State Court which are beyond the subject matter jurisdiction of this Commission. For example, the City contends that the Arizona Corporation Commission acted without jurisdiction in violation of state law in issuing NextG's CC&N. That is just one of the questions that remain to be decided by the state court.

⁴ For example, NextG on numerous occasions has referred to itself as a Local Exchange Carrier, which is often the position it takes when seeking regulatory action from state utility commissions. However, as can be seen from NextG's application filed with the Arizona Corporation Commission, when CLEC status in Arizona would have necessitated filing a bond and providing other services, NextG was quick to disclaim such status. (Exhibit 1, NextG Application and Petition for Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services, Attachment B, Sheet No. 15.) Then, after obtaining a CC&N from the Arizona Commission, NextG went about representing to local jurisdictions that it was in fact a CLEC. (Exhibit 2, NextG Power Point Presentation to City of Glendale.) Another example of the fleeting nature of NextG's legal position is its refusal to make its contracts for

approach will likely necessitate this Commission's performing an "if/then" analysis. Because NextG is so contradictory about how it purports to offer services, this Commission probably cannot make a straightforward determination of whether or not NextG is a CMRS. Instead, the Commission will need to analyze each individual element of the statutory definitions and, if appropriate, make a declaration based on a hypothetical basis of where the DAS services offered by NextG fall within the regulatory spectrum.

To best achieve that end, a step-by-step examination of the various elements of telecommunications and the Public Switched Telephone Network ("PSTN") will prove valuable. First, the Commission should consider how NextG described its service before it was challenged by the City of Scottsdale. The description offered at that time fit squarely within this Commission's definition of CMRS. However, because NextG now describes its service differently – three different services in fact – the Commission will have to decide if the new description of NextG's service even constitutes a telecommunications service at all. Therefore, to aid the Commission's determination on these issues, the City of Scottsdale offers below its public comments to NextG's petition for declaratory ruling.

II. Next G's DAS Systems are either CMRS or Ordinary Equipment Not Subject to Regulation as Telecommunications Services.

The heart of the question before the Commission is the application of the congressional definition of commercial mobile radio service ("CMRS"):

mobile service . . . that is provided for profit and makes interconnected service

service a matter of public record. Although NextG represented that it was a "public service company" under Arizona law, i.e., a company whose rates and methods are a matter of public concern, it refuses to make its rates and terms a matter of public record in direct violation of Arizona law. *See generally*, Exhibit 3, City of Scottsdale Application for Intervention in NextG docket.

available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission

47 U.S.C.A. § 332(d)(1). This Agency has further defined CMRS in 47 C.F.R., Part 20:

A mobile service that is:

- (a) (1) provided for profit, i.e., with the intent of receiving compensation or monetary gain;
- (2) An interconnected service; and
- (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or
- (b) The functional equivalent of such a mobile service

47 CFR § 20.3. NextG does not appear to debate that it makes interconnected service available (See, e.g., Exhibit 1, NextG Application and Petition for Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Services, Attachment B, Sheet No. 15), or that it seeks to profit from its services. Thus, three questions remain for this Commission to resolve: 1) is NextG a mobile service; 2) are NextG's services effectively available to a substantial portion of the public, or 3) is NextG the functional equivalent of a commercial mobile service?

A. NextG is Offering "Mobile Service."

Mobile service is defined by Congress in 47 U.S.C.A. § 153 (27):

The term "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation . . .

(Emphasis added.)⁵

⁵ 47 U.S.C.A. § 153 (33) defines radio communication as "the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities,

1. NextG's Previous Advertising and Court Filings Describe Mobile Service:

Facially, NextG's earlier statements and literature lead to the conclusion that its DAS systems provide mobile services.

NextG is a facilities-based carrier's carrier that designs, permits, builds, owns, operates and manages Distributed Antenna System (DAS) networks that enhance **wireless** performance. NextG Networks® DAS networks balance the aesthetics requirements of communities and consumers with the network performance needs of **wireless carriers**. Performance improvements include increased voice quality, greater handling of call traffic, fewer dropped calls, **better mobile coverage**, faster file transfers, and enhanced video quality.

(Exhibit 4, NextG Networks web pages.) As NextG describes it, the service fills in gaps left by traditional macro-cell towers. (Exhibit 4, NextG Networks web pages.) Following on that, NextG provides an advertisement on its website for providing better wireless coverage:

Every wireless carrier has identified areas around the country where it wants to increase coverage, capacity, and performance. This is why every major carrier in the United States has worked with NextG to quickly and effectively address its network needs. In cases where NextG is already operating in the underserved area, the wireless carrier can be online in a short time.

In areas where NextG does not yet operate, the company can rapidly create wireless systems that would typically take carriers years to cover using traditional towers and individually negotiated rooftop antenna installations. These carriers come to NextG for the most advanced, flexible metro area wireless systems available.

(Exhibit 4, NextG Networks web pages (emphasis added).) And Joseph Milone, NextG's Director of Government Relations, submitted this description of the system under oath to a court of law:

4. NextG's Telecommunications Networks are made up of a "hub" and a system of fiber optic cables, remote optical repeaters or "nodes" and small antennas attached to poles. A carrier's RF signal is received at the NextG hub (typically located on private property) and directed to NextG's conversion equipment located at the hub. NextG's conversion equipment converts the carrier's RF signal to an optical signal and transmits the signal across fiber optic cables strung on existing utility poles or installed in existing underground

apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission." (Emphasis added.)

conduit, typically in public rights-of-way. As the signal nears the location of the carrier's subscriber, NextG's remote conversion equipment or "node" (interconnected with the fiber optic cable and affixed to the utility pole) converts the optical signal back to an RF signal and transmits it out to the subscriber's handset or similar device via a small antenna (in Carlsbad, NextG intends to install "omni" antennas that are only 1 inch in diameter and 24 inches tall). The process works in reverse with respect to RF signals received at the NextG remote node.

(Exhibit 5, Declaration of Joe Milone) (emphasis added).) As represented to the City of San Francisco, NextG's services are designed to amplify and extend wireless carriers' RF signals in difficult coverage areas. (Exhibit 6, NextG Letter to City of San Francisco.) A carrier's RF signal is received at the NextG hub and directed to NextG's conversion equipment. NextG converts the carrier's RF signal to an optical signal for transmission across fiber optic cables. As the signal nears the location of the carrier's subscriber, NextG converts the optical signal back to an RF signal and transmits it out to the subscriber's handset or similar device via a small antenna. The process works in reverse with respect to RF signals received at the NextG remote node. (Exhibit 5, Declaration of Joe Milone.) Ironically, the decision of the Arizona Corporation Commission, upon which NextG places heavy reliance, actually confirms Mr. Milone's conclusion that NextG is transmitting and receiving RF signals from mobile phone end users:

The conversion equipment will allow NextG to accept RF traffic from the customer and then send bi-directional traffic transmission across the appropriate optical networks. At the remote end, NextG or the telecommunications company will provide RF-to-optical conversion equipment to allow bi-directional conversion between optical signals and RF signals. RF signals can be received and radiated at this remote node.

(Exhibit 7, Arizona Corporation Commission Decision and Order, Findings of Fact, § 10.)

What Mr. Milone describes, and what the Arizona Corporation Commission issued authorization for, is CMRS or the functional equivalent thereof.

2. NextG's DAS Functions the Same as CMRS.

Even if NextG's DAS service fails on some technical element of the statutory definition of CMRS, this Commission's rules provide that the DAS service is to be designated as CMRS if it is the functional equivalent thereof.⁶ In that respect, a Committee of this Commission has already concluded that there is no reason to distinguish DAS from traditional wireless carriers:

NextG explains that it provides telecommunications services to wireless carriers via a network architecture that uses fiber-optic cable and small antennas mounted in the public rights-of-way on infrastructure such as utility poles, street lights and traffic signal poles. **NextG argues that DAS Nodes should not be treated as a cell site** because the DAS Node does not include some of the features typically associated with a cell site. The antenna is not associated with a base station or network switching equipment at the DAS Node site. [citation omitted] NextG and MetroPCS maintain that even if the Commission does treat the DAS Node as a cell site this equipment should be exempt from the backup power rule because it is "technologically, financially, and politically infeasible" to install eight hours of backup power . . .

We decline to exempt DAS Nodes or other sites from the emergency backup power rule. Rather, we believe that to the extent these systems are necessary to provide communications services, **they should be treated similarly to other types of assets that are subject to the rule.** We note that many of the arguments made by petitioners are similar to the physical constraint arguments raised by other parties. As we stated earlier, we see no reason why LECs and CMRS providers who choose to place assets at locations with limited physical capacities should generally be excused from compliance with the rule. We realize that many providers have begun to use DAS and other small antenna systems as part of their communications networks. That fact alone, however, is far outweighed by the need to ensure a reliable communications network.

*IN THE MATTER OF RECOMMENDATIONS OF THE INDEPENDENT PANEL
REVIEWING THE IMPACT OF HURRICANE KATRINA ON COMMUNICATIONS
NETWORKS*, 2007 WL 2903938, 14, 22 F.C.C.R. 18013, 18030, 18030, 22 FCC Rcd.

⁶ NextG suggests that it cannot provide CMRS because it does not own a spectrum license from this Commission. However, this Commission's rules contain no limitation to frequency licensees only, 47 C.F.R. § 20.1. Further, the rules expressly include unlicensed services within the scope of "mobile services". 47 C.F.R. § 20.7(h).

18013 - 18031, 22 FCC Rcd. 18013 (emphasis added); *see also* IN THE MATTER OF NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE FOR PROPOSED TOWER REGISTRATIONS EFFECTS OF COMMUNICATIONS TOWERS ON MIGRATORY BIRDS 26 F.C.C.R. 16700, 16734 (declining to treat DAS antennas different than other antenna towers).⁷ Likewise, whether it is a DAS or macro antenna, the end user customer (the "last mile" service) will realize no difference:

Q. And at the Verizon base station, it's converted to a fiberoptic signal; is that correct?

A. Yes, and then connected to our fiber.

Q. Where is the demarcation point between Verizon and NextG in that scenario?

A. Between the base station and the fiber.

Q. So going back to the Pima County services, is there anything different about the end user's phone call in terms -- strike that. In terms of the actual end user wireless phone customer, is there anything different about the way they will use their phone, whether it be used in the Chicago model [backhaul] that we talked about versus the Pima County model [DAS]?

A. From the end user, no.

(Exhibit 8, Deposition Testimony of David Cutrer, p. 28: 15 – p. 29: 3.) NextG even acknowledged that it is technically feasible to substitute a macro antenna belonging to the CMRS carrier at the end node of NextG's DAS system. (*Id.* at p. 35: 1-8.)

⁷ Conversely, consistent with the conclusion that NextG merely provides infrastructure rather than telecommunications, the antenna nodes offered by NextG may really just be signal boosters for its CMRS customers:

Signal boosters [footnote: Our use of the term "signal booster" in this Public Notice is intended to include all manner of amplifiers, repeaters, boosters, **distributed antenna systems**, and in-building radiation systems that serve to amplify CMRS device signals, Part 90 device signals, or extend the coverage area of CMRS providers or Part 90 service licensees] are devices that amplify and/or distribute wireless signals to areas with poor signal coverage, such as tunnels, subways, large buildings, and rural areas. When properly installed, these devices, which can either be fixed or mobile, can help consumers, wireless service providers, and public safety first responders by expanding the area of reliable service to unserved or weak signal areas.

See FCC WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PETITIONS REGARDING THE USE OF SIGNAL BOOSTERS AND OTHER SIGNAL AMPLIFICATION TECHNIQUES USED WITH WIRELESS SERVICES, WT Docket No. 10-4, Released: January 6, 2010 (emphasis added).

Based on these descriptions, the conclusion that NextG offers CMRS or its functional equivalent is inescapable. However, after the City of Scottsdale explained this in state court legal briefings, NextG changed the way it described its services. If this new description of NextG's DAS service causes it to fail to be a CMRS, it is due to the fact that NextG is merely an equipment provider and not a telecommunications service provider.

B. NextG's New Description of Its Services May Mean that It Does Not Provide Telecommunication Services at All.

After the City of Scottsdale filed a brief in the Arizona state court litigation pointing out that NextG appeared to be offering commercial mobile radio services, NextG and its employees tried to change the description of the service it offers. What NextG now describes as its service in the Petition for Declaratory Ruling is somewhat misleading. NextG asks the Commission to make a declaratory ruling based on a comparison of itself as a "backhaul service." (NextG Petition, page 1.) In actuality, NextG offers at least three different types of service in different parts of the country: 1) "dark fiber" service; 2) "backhaul" service; and 3) "RF Transport service." The RF Transport service which NextG alludes to in its Petition is actually distinguishable from "backhaul service." These three different types of service offered by NextG and the changed description of its service raise a series of new questions for this Commission to consider.

Dark Fiber Service: The most basic form of service NextG offers is what it terms as "dark fiber" service. For its dark fiber service, NextG merely makes space available on fiber optic lines that it owns and does not take any responsibility for transporting the signal:

Q. Are you familiar with an industry term called "dark fiber"?

A. Yes.

Q. What is your understanding of that term?

A. It's a term used where people either sell or purchase the right to use a fiber asset, generally some number of strands of fiber, for whatever purpose they want to use it for.

Q. In the case of a dark fiber, is it – strike that. Does NextG have any customers where it strictly provides a dark fiber service?

A. Yes.

Q. What areas of the country do you provide that service in?

A. As an example, Southern California.

Q. In the case of dark fiber service that NextG provides, does NextG at any point in time have responsibility or control over the signal?

A. No.

Q. Is that a characteristic of dark fiber service where the dark fiber provider never assumes control over the signal?

A. I would say that's true.

(Exhibit 8, Deposition Testimony of David Cutrer, p. 52: 8 – p. 53: 6.) In this most basic service, NextG merely leases available fiber-optic space for use as its customer sees fit and takes no participation in the transmission or control of the telecommunications signals. By NextG's own acknowledgment, this dark fiber model does not even constitute telecommunication services. (Exhibit 9, Deposition Testimony of Robert Delsman, pp. 24-25.)

Backhaul Service⁸: NextG's "backhaul service" is slightly more sophisticated than its basic "dark fiber" service. What NextG describes as "backhaul service" is exemplified by the service it offers to Verizon wireless in the Chicago, Illinois area.⁹ In this form of service, NextG provides fiber optic transport of signals from a Verizon macro-cell antenna to and from a Verizon Hub. (Exhibit 8, Deposition Testimony of David Cutrer, pp. 9-17.) NextG does not install an antenna in the backhaul form of service as the CMRS customer's macro-cell antenna is relied on for the propagation of

⁸ This Commission has defined "Backhaul" as "[t]he telecommunications link used to transport traffic from a geographically distant point, such as a wireless base station, to a significant aggregation point in the network, such as a mobile telephone switching office or Internet peering point."

CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 2010 WL 972375, 305.

⁹ Verizon's status as a CMRS is not a subject of dispute.

free space RF signals. (*Id.* at pp. 9-17.) Instead, NextG simply carries a signal back and forth over fiber optic lines from Verizon's base station to an interface with the Public Switched Telephone Network ("PSTN"). Verizon uses its macro-cell antenna to propagate RF signals to and from its customers. (Exhibit 8, Deposition Testimony of David Cutrer, p. 10:17 – p. 12:17.)

RF Transport Service:

NextG's third type of service adds an antenna node as an element to the fiber-optic backhaul service. This "DAS" service is generally the type of service NextG described in its petition. NextG's chief technology officer, David Cutrer, draws a distinction between backhaul and RF transport service:

Q. Do you draw a distinction between transport services and backhaul services?

A. I draw a distinction between RF transport and backhaul.

Q. What are the distinguishing characteristics between RF transport and backhaul service?

A. A backhaul service is transport between a carrier base station and their switch location. RF transport is transport between a carrier base station and where the signal is radiated to mobile users.

(Exhibit 8, Deposition Testimony of David Cutrer, p. 8: 21 – p. 9: 16.) NextG's DAS service is described by its director of implementation, Carl Cabico:

Q. Okay. What's your basic understanding?

A. Our customer's radio equipment is connected on one end. It interfaces to the DAS system. So the customers, I'll call it a hub location, the customer's radio equipment injects a signal into the DAS system, which consists of the fiberoptic cable that NextG constructs, and that signal is transported over NextG's fiberoptic cable to the remote end where that signal is remotely controlled by the customer's equipment at the hub, and the signal is -- goes out the antenna, and vice versa, in reverse direction.

Q. What's your understanding of who NextG's customers are?

A. NextG's customers are any perspective customers who have a need to use our transport services over our fiberoptic networks.

(Exhibit 10, Deposition testimony of Carl Cabico, p. 10: 11 – 25.)¹⁰ Given that the basic function of an antenna is to transmit and receive RF signals (Exhibit 10, Deposition testimony of Carl Cabico, p. 12: 12 – p. 13: 10), NextG's addition of an antenna node to its fiber optic lines squarely raises the question of whether or not its RF Transport is a mobile radio service.¹¹ It seems axiomatic that having an antenna which functions to transmit and receive RF signals to and from mobile telephone customers as part of a system is a mobile service. In fact, David Cutrer has testified that the only significant difference between NextG's DAS antenna and a CMRS macro-cell antenna is size. (Exhibit 8, Deposition testimony of David Cutrer, p. 38: 11 – p. 39: 5.) From there, this Commission should be able to easily conclude that NextG's DAS system constitutes a mobile service. Nevertheless, NextG insists that it is not a CMRS because it does not "transmit" the RF signals but rather the transmission is handled by the CMRS customer.¹² It is not yet clear whether NextG's change in the description of its service is the result of a change in actual functionality of the system or simply a wordplay like the distinction drawn between "transport" and "transmit" by Robert Delsman of NextG:

Q. So at the node the transmission of the signal is controlled by the customer?

A. Correct.

Q. Is the hand-off process at the same location for the reverse?

A. Yes.

Q. So the hand-off would occur at BTS; is that correct?

A. Yes.

¹⁰ Although this Commission does not have jurisdiction over the state court litigation in Arizona, it is worthwhile to note that the City of Scottsdale's encroachment fee that NextG challenges therein applies to the antenna node or "Wireless Communication Facility" as it is defined under the City's ordinance: "*Wireless communications facility (WCF)* means a facility for the transmission and/or reception of radio frequency signals, including over-the-air broadcasting signals, usually consisting of antennas, equipment cabinet, a support structure, and/or other transmission and reception devices." Scottsdale City Code, Appendix B, § 3.100.

¹¹ The City does not believe there is any disagreement that the true fiber-optic backhaul transport without RF services is not a mobile radio service.

¹² This Commission will recall from the facts outlined by the City above that NextG had previously claimed to be transmitting the RF signals.

Q. So in this instance, if it's a call going to the hand-held mobile customer of Verizon, there will be a hand-off from Verizon to NextG at the BTS; is that correct?

A. The hand-off from Verizon to NextG occurs, yes, at the BTS, at the demarcation point, but NextG doesn't know anything about the signal or where it's going. NextG is transporting the signal without interference in terms of change or protocol or form.

Q. When you use the term "transporting," what is NextG doing to transport that signal?

A. It's carrying the signal from the BTS to the remote node where the signal is propagated by the customer.

Q. Okay. And the transport from the BTS to the remote node, is that different than transmitting the signal or is that synonymous?

A. It is.

Q. It's synonymous?

A. No, it's different.

Q. What's different between transporting a signal and transmitting a signal?

A. Transport simply means carrying -- in our world, carrying from point A to point B which the customer has specified. Transmission would involve control of the signal itself and the ability to direct, transmit, and receive where that's going and to whom and under what conditions.

(Exhibit 9, Deposition Testimony of Robert Delsman, p. 35: 2 – p. 36: 13.) Either way, if NextG does indeed not engage in the transmission of telecommunication signals, this Commission must decide a fundamental question of whether NextG is even a telecommunications company or rather just an infrastructure provider no different in status than a company that merely manufactures fiber-optic strands or a tower company that merely installs towers upon which CMRS providers can mount antennas.¹³

1. If NextG's DAS Service Does Not Transmit Signals, It is Not a Telecommunications Service.

NextG may well not be a CMRS provider, albeit for reasons different than those

¹³ The conclusion that NextG is merely a provider of infrastructure rather than a telecommunications company appears consistent with other filings by NextG and the PCIA with this Commission. See Comments Of Pcia—The Wireless Infrastructure Association And The Das Forum (A Membership Section Of PCIA) to Wireless Bureau Request for Comments on State of Wireless Competition, WT Docket No. 11-186. This Commission also appears to recognize distributed antenna systems as mere infrastructure in its discussions as well. See IN THE MATTER OF IMPLEMENTATION OF SECTION 6002(B) OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1993 25 F.C.C.R. 11407, 11577 (F.C.C.)-11578 (F.C.C.), fn 757, 2010 WL 2020768, (2010).

stated in NextG's petition. In light of the new description of its DAS service offered by NextG, the Commission will have to revisit the statutory definitions of "telecommunications" and "radio communication" found in 47 U.S.C. § 153:

The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

47 U.S.C. § 153(50) (emphasis added). And in the context of CMRS, radio communication is defined as:

The term "radio communication" or "communication by radio" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

47 U.S.C.A. § 153(40) (emphasis added). The common theme among these two statutory definitions is the element of "transmission." Without actually transmitting communication signals, either "wireless" or "wired," a company is neither a telecommunications carrier nor a mobile service provider. 47 U.S.C. § 153(51).¹⁴

2. NextG's New DAS Service Does Not Transmit Signals Within the Meaning of the FTA.

Based on the new description it provides of its services, NextG does not appear to provide telecommunication services at all, especially not with respect to its incorporation of antennas. If NextG is not using the antennas to transmit RF signals (the sole purpose of an antenna), then inclusion of that equipment in the system appears to be the antenna equivalent of the "dark fiber" it provides in other installations, i.e., a "dark antenna." In fact, characterization of the NextG antenna node as mere

¹⁴ Under §153(51), a telecommunications carrier is only treated as a carrier to the extent that it is engaged in providing telecommunications services. 47 U.S.C. § 332(c)(1) instructs the Commission to treat commercial mobile radio service as common carrier service.

infrastructure is consistent with the recent sworn testimony from NextG employees acknowledging that the antenna in the NextG system is necessary to NextG's CMRS customer, but not necessary to NextG:

Q. But you've also indicated that all of the RF emissions from the antenna are broadcast by the customer and not NextG; is that correct?

A. Correct.

Q. What part of NextG's responsibility for handling the signal requires that antenna?

A. The requirement of the antenna is, as I believe I said, a prerequisite for the ability of the customer to emit the signal that we have converted.

Q. Correct. It's for the customer to handle that signal, right, at the antenna point?

A. Correct.

(Exhibit 9, Deposition Testimony of Robert Delsman, p. 63:25 – p. 64:11.) And Carl Cabico, NextG's Director of Implementation, had this to say about NextG's DAS system installed at Arizona State University:

Q. Do you understand, let's take Verizon for example. Do you understand Verizon to be a provider of wireless services on a retail basis?

A. From my understanding, yes, Verizon is.

Q. And do you understand that Verizon would typically have mobile phone subscribers as its customers?

A. Yes.

Q. Is NextG's equipment designed to receive signals from Verizon's mobile phone customers?

THE WITNESS: Not our company, because our equipment is the fiberoptic jumpers and cable. The equipment that accepts the subscriber service is owned by, in this case, Verizon.

(Exhibit 10, Deposition Testimony of Carl Cabico, p. 11: 5 – 18.) Then, when asked to discuss NextG's DAS service which was installed for AT&T in Pima County, Arizona, Cabico confirmed that the antenna was necessary to the CMRS customer, not to NextG:

Q. Do you have any understanding as to whether NextG is authorized by AT&T to have its antennas transmit those frequencies that are within licensed spectrum?

THE WITNESS: For clarification, NextG isn't transmitting the signal to the antennas.

Q. Okay.

A. AT&T is transmitting the signal through the antennas.

Q. So is it fair to say, then, that NextG doesn't really need an antenna if it's not transmitting any signals to and from that antenna?

THE WITNESS: Well, **NextG doesn't need the antenna, but AT&T needs the antenna to transmit their signals.**

Q. So the antenna is just something NextG is putting in for the benefit of its customers; is that correct?

A. Yes.

Q. NextG just does fiberoptic transport?

THE WITNESS: Yes.

(Exhibit 10, Deposition Testimony of Carl Cabico, p. 35: 14 – p. 36: 12 (emphasis added).) Taking NextG's new description of its service at face value, NextG may well not be a mobile service because it does not even provide telecommunication service. If NextG does transmit signals as a telecommunications service, then NextG is clearly involved with a mobile service and the Commission will have to consider the remaining element of the CMRS definition – availability to the public.

C. NextG's Service Does Not Appear to be a Common Carrier Service Effectively Available to the Public.

If the conclusion is reached that NextG does provide mobile services because it is more than just an infrastructure provider, then the Commission will have to consider whether NextG's services are to such classes of eligible users as to be effectively available to a substantial portion of the public. 47 U.S.C. § 332; 47 C.F.R. Part 20. Availability to the public is essentially common carrier status. In that sense, NextG's business activities appear to be of a private interest, not a public one. NextG's are directed to an exclusive class of large commercial wireless telephone carriers who possess frequency licenses. NextG confirms this when it states that it is a "carrier's carrier." (Exhibit 11, Testimony of Robert Delsman, July 27, 2006 Corporation Commission Hearing, Transcript, 9:13-23.) NextG has also noted that most, if not all,

contracts are done on an individual case basis. *Id.* at 11:13-15. "Carriers' carriers" are not "common carriers." ***Virgin Islands Telephone Corp. v. FCC***, 198 F.3d 921 (D.C. Cir. 1999). NextG is a "carrier's carrier" providing a few major industry players with signal boosting services on an individual case basis.¹⁵ If that truly is the extent of NextG's services, NextG is not a telecommunications service at all because it does not provide services effectively available to the public. 47 U.S.C. § 153(53).

III. CONCLUSION:

When an end user mobile phone subscriber places or receives a telephone call, a wireless radiofrequency signal is transmitted to or from an antenna through the PSTN. Whether that signal is transmitted through a macro-cell antenna or a DAS antenna may affect the speed and quality of the transmission, but not the functional result. As originally described, NextG's DAS service transmits wireless radiofrequency signals to and from mobile phone subscribers, i.e., CMRS. At a minimum, it is functionally equivalent to CMRS. If NextG's DAS service does not meet this Commission's test for CMRS, it is only because NextG is not a telecommunications provider at all.

The City of Scottsdale respectfully requests that this Commission either declare that NextG's service is CMRS or its functional equivalent or, if not, recognize that NextG

¹⁵ NextG refers to a staff memorandum of the Arizona Corporation Commission as having some precedential value with this Commission. This is wholly misplaced as the Arizona Corporation Commission does not even have any precedential value in its own state. ***Jennings v. Woods***, 194 Ariz. 314, 327, 982 P.2d 274, 287 (1999). Further, the staff memorandum misstates the law. That memorandum relies upon a 1975 Circuit Court Case, ***NARUC v. FCC***. (Staff Memo, p. 8.) However, the ***NARUC*** case does not say that mobile service providers consist of only those with frequency licenses. Instead, the ***NARUC*** court identified two general types of land mobile service, one being "common carrier licensees" and the other being "[p]rivate services [which] apparently include all other mobile radio operations" 525 F.2d at 634 (emphasis added). More important than interpretation of the exact language of ***NARUC***, however, is the fact that ***NARUC*** was decided before the current definition of mobile services was adopted. The current definition was first adopted by Congress in 1982, seven years after ***NARUC*** was decided. See *An Act to Amend the Communications Act of 1934*, PL 97-259, 1982 HR 3239 § 120 (Sept. 13, 1982). Even later, alternative definitions under 47 U.S.C. § 153(27) were added as part of the 1993 *Omnibus Budget Reconciliation Act*. 107 Stat 312, 396, PL 103-66, Title VI (Aug 10, 1993).

is not a telecommunications service company at all, particularly with respect to its desire to install dark antennas in municipal rights-of-way.

Respectfully submitted this 2nd day of April, 2012.

City of Scottsdale, Arizona

A handwritten signature in blue ink, appearing to read 'Bruce Washburn', is written over a horizontal line.

Bruce Washburn, City Attorney
Eric C. Anderson, Assistant City Attorney
SCOTTSDALE CITY ATTORNEY'S OFFICE
3939 North Drinkwater Boulevard
Scottsdale, AZ 85251
Tel. 480-312-2405
Fax. 480-312-2548

Counsel for City of Scottsdale

EXHIBIT “1”

ORIGINAL

NEW APPLICATION



0000020858

COLE, RAYWID & BRAVERMAN, L.L.P.

ATTORNEYS AT LAW
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200
WASHINGTON, D.C. 20006-3458
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DANIELLE FRAPPIER
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LOS ANGELES OFFICE
2381 ROSECRANS AVENUE, SUITE 110
EL SEGUNDO, CALIFORNIA 90245-4290
TELEPHONE (310) 643-7999
FAX (310) 643-7997

T-20377A-05-0484

July 1, 2005

BY FEDERAL EXPRESS

Docket Control Center
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007-2996

Arizona Corporation Commission
DOCKETED

JUL 01 2005

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AZ CORP COMMISSION
DOCUMENT CONTROL

2005 JUL -11 P 2:48

RECEIVED

**Re: Application and Petition for Certificate of Convenience and Necessity of
NextG Networks of California, Inc., d/b/a NextG Networks West**

Dear Sir or Madam:

Enclosed please find for filing an original and thirteen (13) copies of the Application and Petition for Certificate of Convenience and Necessity of NextG Networks of California, Inc., d/b/a NextG Networks West ("NextG").

I have also enclosed an extra copy of this letter and the application to be date stamped and returned to me in the enclosed, self-addressed, postage prepaid envelope. If you have any questions, please call me at the above telephone number.

Sincerely,

Scott Thompson
Danielle Frappier
Counsel for Applicant
NextG Networks of California, Inc., d/b/a NextG Networks West

Encl.

192326_1.DOC

(A-2) The name, address, telephone number (including area code), facsimile number (including area code), e-mail address, and World Wide Web address (if one is available for consumer access) of the Applicant:

Name & Address:
NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Telephone: (408) 719-8510
Facsimile: (408) 719-8650
Email address:
arodriguez@nextgnetworks.net
Web Site Address:
<http://www.nextgnetworks.net/index2.htm>

After July 18, 2005:
2216 O'Toole Ave.
San Jose, CA, 95131
Telephone: (408) 954-1580
Facsimile: (408) 383-5397

(A-3) The d/b/a ("Doing Business As") name if the Applicant is doing business under a name different from that listed in Item (A-2):

Applicant will be doing business in Arizona as NextG Networks West.

(A-4) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Management Contact:

Management Contact:
Anthony Rodriguez
Regulatory and Contracts Specialist
NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Telephone: (408) 719-8510
Facsimile: (408) 719-8650
Email address:
arodriguez@nextgnetworks.net

After July 18, 2005:
2216 O'Toole Ave.
San Jose, CA, 95131
Telephone: (408) 954-1580
Facsimile: (408) 383-5397

(A-5) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Attorney and/or Consultant:

Attorney:
T. Scott Thompson
Cole, Raywid & Braverman, LLP
1919 Pennsylvania Ave., Suite 200
Washington, D.C. 20006

Telephone: (202) 659-9750
Facsimile: (202) 452-0067
Email address: sthompson@crblaw.com

ARIZONA CORPORATION COMMISSION

Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services

Mail original plus 13 copies of completed application to:

For Docket Control Only:
(Please Stamp Here)

Docket Control Center
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

Please indicate if you have current applications pending
in Arizona as an Interexchange reseller, AOS provider,
or as the provider of other telecommunication services.

Type of Service: N/A

Docket No.: _____ Date: _____

Date Docketed: _____

Type of Service: N/A

Docket No.: _____ Date: _____

Date Docketed: _____

A. COMPANY AND TELECOMMUNICATION SERVICE INFORMATION

(A-1) Please indicate the type of telecommunications services that you want to provide in Arizona and answer the appropriate numbered items:

☐

Resold Long Distance Telecommunications Services (Answer Sections A, B).

☐

Resold Long Exchange Telecommunications Services (Answer Sections A, B, C).

☐

Facilities-Based Long Distance Telecommunications Services (Answer Sections A, B, D).

☐

Facilities-Based Local Exchange Telecommunications Services (Answer Sections A, B, C, D, E).

☐

Alternative Operator Services Telecommunications Services (Answer Sections A, B).

☒

Other (Please attach complete description) **transport and backhaul services, to other carriers, including but not limited to wireless telecommunications services providers and potentially to wireless information services providers; please see description of service provided at Attachment E**

(A-6) The name, address, telephone number (including area code), facsimile number (including area code), E-mail address of the Applicant's Complaint Contact Person:

Complaint Contact:
Anthony Rodriguez
Regulatory and Contracts Specialist
NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Telephone: (408) 719-8510
Facsimile: (408) 719-8650
Email address:
arodriguez@nextgnetworks.net

After July 18, 2005:
2216 O'Toole Ave.
San Jose, CA, 95131
Telephone: (408) 954-1580
Facsimile: (408) 383-5397

(A-7) What type of legal entity is the Applicant?

☐

Sole proprietorship

☐

Partnership: ___ Limited, ___ General, ___ Arizona, ___ Foreign

☐

Limited Liability Company: ___ Arizona, ___ Foreign

☒

Corporation: ___ "S", X "C", ___ Non-profit

☐

Other, specify: _____

(A-8) Please include "Attachment A":

Attachment "A" must include the following information:

1. A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC or other entity in the State of Arizona.
2. A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).
3. Indicate percentages of ownership of each person listed in A-8.2.

(A-9) Include your Tariff as "Attachment B".

Your Tariff must include the following information:

1. Proposed Rates and Charges for each service offered (reference by Tariff page number).
2. Tariff Maximum Rate and Prices to be charged (reference by Tariff page number).
3. Terms and Conditions Applicable to provision of Service (reference by Tariff page number).
4. Deposits, Advances, and/or Prepayments Applicable to provision of Services (reference by Tariff page number).
5. The proposed fee that will be charged for returned checks (reference by Tariff page number).

Proposed Rates and Charges: Tariff Original Sheets 6 & 9

Tariff Maximum Rate and Prices: Tariff Original Sheets 6 & 9

Terms and Conditions: Tariff Original Sheets 5-16

Deposits: Tariff Original Sheets 10 & 14 (no advances or prepayments are required, unless otherwise provided under Individual Case Basis, special promotions or special construction arrangements)

No fee will be charged for returned checks, unless otherwise provided under Individual Case Basis, special promotions or special construction arrangements

(A-10) Indicate the geographic market to be served:



Statewide. (Applicant adopts statewide map of Arizona provided with this application).
See attached copy of map



Other. Described and provide a detailed map depicting the area.

(A-11) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

Describe in detail any such involvement. Please make sure you provided the following information:

1. States in which the Applicant has been or is involved in proceedings.
2. Detailed explanations of the Substance of the Complaints.
3. Commission Orders that resolved any and all Complaints.
4. Actions taken by the Applicant to remedy and/or prevent the Complaints from re-occurring.

With the one exception involving the City of San Francisco described below, neither Applicant nor any officer, director, partner or manager of the Applicant has been or is currently involved in any formal or informal complaint proceeding pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

On March 9, 2005, the City of San Francisco filed a "complaint" against NextG before the California Public Utilities Commission ("CPUC"). The City's complaint asserts, essentially, that NextG should not have been granted a certificate of public convenience and necessity by the CPUC because, the City alleges, NextG's service does not fall within the statutory categories for which such certificates are granted. The City's complaint is a response to an ongoing dispute between NextG and the City over the fact that the City has denied NextG's ability to construct in the public rights-of-way, which violates NextG's franchise under California Public Utilities Code § 7901 and Section 253 of the federal Communications Act. NextG filed a complaint against the City in federal district court on February 11, 2005 in the Northern District of California (Civ 05-0658). NextG strenuously denies that there is any merit to the City's complaint, and is vigorously opposing the complaint. In any event, the dispute between NextG and the City of San Francisco is not relevant to NextG's qualification to hold a certificate in Arizona.

A-12) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

Describe in detail any such judgments or convictions. Please make sure you provided the following information:

1. States involved in the judgments and/or convictions.
2. Reasons for the investigation and/or judgment.
3. Copy of the Court order, if applicable.

No officer, director, partner or manager of the applicant has been or is currently involved in any civil or criminal investigation, has had any judgments entered in any civil matter, has had any judgments levied by any administrative or regulatory agency, or has been convicted of any criminal acts within the last ten (10) years.

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

☐

Yes

☒

No

Not applicable because applicant's service does not provide access to toll providers or resellers. Please refer to the service description at Attachment E for a more complete explanation of NextG's service.

(A-14) Is applicant willing to post a Performance Bond? Please check appropriate box(s).

☐

For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

☐

Yes

☒

No

If "No", continue to question (A-15).

☐

For Long Distance Exchange Resellers, a \$25,000 bond will be recommended.

☐

Yes

☒

No

If "No", continue to question (A-15).

☐

For Facilities-Based Providers of Long Distance, A \$100,000 bond will be recommended.

☐

Yes

☒

No

If "No", continue to question (A-15).

☐

For Facilities-Based Providers of Local Exchange, A \$100,000 bond will be recommended.

☐

Yes

☒

No

If "No", continue to question (A-15).

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

Not applicable because applicant does not propose to provide long distance or local exchange services in Arizona. As a result, applicant does not believe that it is necessary for it to post a performance bond. Applicant is willing to discuss the matter with the Commission, however, should it determine that a bond may be necessary.

(A-15) If No to any of the above, provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the applicant's superior financial position limits any risk to Arizona consumers.

NextG believes that a bond is not necessary due to the fact that it will be providing its service only other carriers, not to individuals or small businesses. NextG's carrier customers are sophisticated businesses with the incentive and adequate contractual and other means to ensure that NextG provides its service at a high level of service quality. Moreover, NextG's superior financial position further ensures that the lack of a bond poses no risk to Arizona consumers. NextG will rely on the financial resources of its parent company, NextG Networks, Inc. The ample financial backing of the parent company provides an additional assurance that the applicant need not post a performance bond.

NextG's deposit policy, found at Original Sheet 10 of its tariff, provides that "[d]eposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first, except where the Customer has been delinquent in the payment of a bill or where the deposit has been applied to the closing bill upon discontinuance of service."

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until you are advised to do so by the Hearing Division.

Applicant will file the Affidavit of Publication after this application has been filed, as advised by Commission staff.

(A-17) Indicate if the Applicant is a switchless reseller of the type of telecommunications services that the Applicant will or intends to resell in the State of Arizona:

☐ Yes ☒ No

If "Yes," provide the name of the company or companies whose telecommunications services the Applicant resells.

(A-18) List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in the State of Arizona:

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

Applicant's parent, through subsidiaries like the applicant, has been authorized to offer its service in the following states: California, District of Columbia, Florida, Georgia, Illinois, Maryland, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Texas, Virginia and Wisconsin. It has not had any application to provide its service denied in any state.

(A-19) List the States in which the Applicant currently offers telecommunications services similar to those that the Applicant will or intends to offer in the State of Arizona:

Note: If the Applicant currently provides telecommunications services that the Applicant intends to provide in Arizona in six or more states, excluding Arizona, list the states. If the Applicant does not currently provide telecommunications services that the Applicant intends to provide in Arizona in five or less states, list the key personnel employed by the Applicant. Indicate each employee's name, title, position, description of their work experience, and years of service in the telecommunications services industry.

NextG currently offers its service in California, Georgia and Illinois. Descriptions of key personnel are provided in Attachment F.

(A-20) List the names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801.

No affiliates of applicant provide the service NextG proposes to offer in Arizona.

B. FINANCIAL INFORMATION

(B-1) Indicate if the Applicant has financial statements for the two (2) most recent years.

☐

Yes

☒

No

If "No," explain why and give the date on which the Applicant began operations.

Applicant will rely on the financial resources of its parent company, NextG Networks, Inc. The parent, however, is a private company and its financials are highly confidential, proprietary information that are not made public. Therefore, NextG has not provided the financial information requested at this time. NextG can provide such information to the Commission upon the execution of a non-disclosure agreement with the Commission that provides for the confidential treatment of its financials.

NextG began offering service in California on July 21, 2004 and has continued to expand its operations to other states.

(B-2) Include "Attachment D."

Provide the Applicant's financial information for the two (2) most recent years.

1. A copy of the Applicant's balance sheet.
2. A copy of the Applicant's income statement.

3. A copy of the Applicant's audit report.
4. A copy of the Applicant's retained earnings balance.
5. A copy of all related notes to the financial statements and information.

Note: Make sure "most recent years" includes current calendar year or current year reporting period.

Please see applicant's response to question B-1 above.

(B-3) Indicate if the Applicant will rely on the financial resources of its Parent Company, if applicable.

Applicant will rely on the financial resources of its parent company, NextG Networks, Inc.

(B-4) The Applicant must provide the following information.

1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per unit.
2. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.
3. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.
4. If the projected value of all assets is zero, please specifically state this in your response.
5. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

Please see applicant's response to question B-1 above.

C. RESOLD AND/OR FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.

(C-1) Indicate if the Applicant has a resale agreement in operation,

☐

Yes

☒

No

If "Yes," please reference the resale agreement by Commission Docket Number or Commission Decision Number.

Not applicable. Applicant will not provide local exchange telecommunications services. See service description at Attachment E.

**D. FACILITIES-BASED LONG DISTANCE AND/OR FACILITIES BASED LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES**

(D-1) Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in the State of Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:

☐

Yes

☒

No

If "Yes," provide the following information.

1. The date or approximate date that the Applicant began selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services for the State of Arizona.
2. Identify the types of facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services the Applicant sells in the State of Arizona.

If "No," indicate the date when the Applicant will begin to sell facilities-based long distance telecommunications AND/OR facilities-based local exchange telecommunications services in the State of Arizona:

Not applicable. Applicant will not provide long distance or local exchange telecommunications services. See service description at Attachment E.

(D-2) Check here if you wish to adopt as your petition a statement that the service has already been classified as competitive by Commission Decision:

☐

Decision # 64178 Resold Long Distance

☐

Decision # 64178 Resold LEC

☐

Decision # 64178 Facilities Based Long Distance

☐

Decision # 64178 Facilities Based LEC

Applicant hereby petitions the Commission to find that its service is competitive because it is a point-to-point transport and backhaul private line telecommunications service leased on a long-term basis, similar to the private line services offered on a competitive basis by other telecommunications providers in Arizona. See *In Re Application of OnFiber Carrier Services, Inc.*, Opinion and Order, Docket No. T-03874A-03-0766 (Ariz. Corp. Comm'n June 25, 2004). A more detailed description of Applicant's service is provided at Attachment E.

E. FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.

(E-1) Indicate whether the Applicant will abide by the quality of service standards that were approved by the Commission in Commission Decision Number 59421:

☐

Yes

☒

No

Not applicable. Applicant will not provide local exchange telecommunications services. See service description at Attachment E.

(E-2) Indicate whether the Applicant will provide all customers with 911 and E911 service, where available, and will coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to provide this service:

☐

Yes

☒

No

Not applicable. Applicant will not provide local exchange telecommunications services. See service description at Attachment E.

(E-3) Indicate that the Applicant's switch is "fully equal access capable" (i.e., would provide equal access to facilities-based long distance companies) pursuant to A.A.C. R14-2-1111 (A):

☐

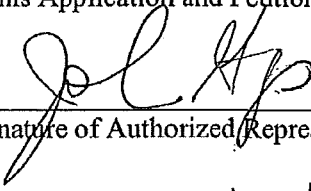
Yes

☒

No

Not applicable. Applicant will not provide local exchange telecommunications services. See service description at Attachment E.

I certify that if the applicant is an Arizona corporation, a current copy of the Articles of Incorporation is on file the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county, and/or State agency approvals have been obtained. Upon signing of this application, I attest that I have read the Commission's rules and regulations relating to the regulations of telecommunications services (A.A.C. Title 14, Chapter 2, Article 11) and that the company will abide by Arizona state law including the Arizona Corporation Commission Rules. I agree that the Commission's rules apply in the event there is a conflict between those rules and the company's tariff, unless otherwise ordered by the Commission. I certify that to the best of my knowledge the information provided in this Application and Petition is true and correct.


(Signature of Authorized Representative)

(Date)

2/14/2005

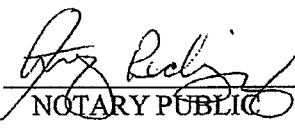
John B. Georges

(Print Name of Authorized Representative)

Chairman/CEO/President

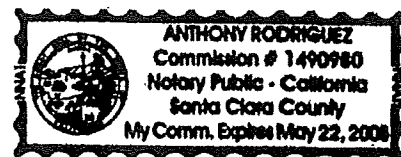
(Title)

SUBSCRIBED AND SWORN to before me this 14th day of February, 2005


NOTARY PUBLIC

My Commission Expires

May 22, 2008



**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT A

A-8(1) Please find attached a copy of NextG's Certificate of Good Standing as a foreign corporation in the State of Arizona.

A-8(2) NextG Corporate Officers and Directors

NAME	POSITION
John B. Georges	Chairman/CEO/President
David Cutrer	Vice President/Chief Technology Officer
Tom Kais	Treasurer
J. Casey McGlynn	Secretary
Ronald S. Kramer	Assistant Secretary

A-8(3) The applicant is a wholly-owned subsidiary of its parent, NextG Networks, Inc. Thus, none of the officers or directors listed above own any shares in the applicant.

STATE OF ARIZONA



Office of the CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Brian C. McNeil, Executive Secretary of the Arizona Corporation Commission, do hereby certify that

*****NEXTG NETWORKS OF CALIFORNIA, INC.*****

a foreign corporation organized under the laws of Delaware did obtain authority to transact business in the State of Arizona on the 23rd day of December 2004.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said corporation has not had its authority revoked for failure to comply with the provisions of the Arizona Business Corporation Act; that its most recent Annual Report, subject to the provisions of A.R.S. sections 10-122, 10-123, 10-125 & 10-1622, has been delivered to the Arizona Corporation Commission for filing; and that the said corporation has not filed an Application for Withdrawal as of the date of this certificate.

This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 1st Day of February, 2005, A. D.



EXECUTIVE SECRETARY

BY:

Yvonne McLaughlin

**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT B

Please find the applicant's tariff attached hereto.

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Title Sheet

Tariff Schedule Applicable to
RADIO FREQUENCY TRANSPORT AND BACKHAUL SERVICES
of
NEXTG NETWORKS OF CALIFORNIA, INC. D/B/A NEXTG NETWORKS WEST

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 1

CHECK SHEET

The Title Sheet and Sheets 1 through 17 inclusive of this tariff are effective as of the date shown at the bottom of the respective sheet(s).

<u>SHEET</u>	<u>REVISION</u>
Title	Original
1	Original
2	Original
3	Original
4	Original
5	Original
6	Original
7	Original
8	Original
9	Original
10	Original
11	Original
12	Original
13	Original
14	Original
15	Original
16	Original
17	Original

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 2

TABLE OF CONTENTS

<u>Subject Matter</u>	<u>Sheet No.</u>
TITLE SHEET	Title
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Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 3

PRELIMINARY STATEMENT

This tariff contains all effective rates, tolls, rentals, charges and classifications, together with all related rules and regulations, relating and applicable to the operations of NextG Networks of California, Inc. d/b/a NextG Networks West ("NextG" or "Company") in Arizona.

The Company has been authorized by the Arizona Corporation Commission ("ACC") to provide radio frequency transport and backhaul services to commercial mobile radio service providers ("RF Transport Services").

The rates and rules contained herein are subject to change pursuant to the rules and regulations of the ACC.

EXPLANATION OF SYMBOLS

- (C) To signify **changed** listing, rule or condition which may affect rates or charges.
- (D) To signify **deleted or discontinued** rate, regulation or condition.
- (I) To signify a change resulting in an **increase** to a Customer's bill.
- (L) To signify that material has been **relocated** to another tariff location.
- (N) To signify a **new** rate, regulation condition or sheet.
- (R) To signify a change resulting in a **reduction** to a Customer's bill.
- (T) To signify a change in **text** but no change to rate or charge.

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Tariff Manager

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NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 4

SERVICE AREA

The Company has been authorized by the ACC to provide its RF Transport Service throughout the state of Arizona.

APPLICABILITY

This tariff applies only for the use of the Company's RF Transport Services for communications between points within the State of Arizona.

AVAILABILITY OF THE COMPANY'S TARIFF

Complete copies of the Company's tariff are maintained at the following address:

NextG Networks of California, Inc.
1759 South Main Street, Suite 128
Milpitas, CA 95035

Issued by:
Robert L. Delsman
Tariff Manager

Date Filed: July 1, 2005
Effective: July 1, 2005

1.0 RATES AND CHARGES

Schedule 1: RF Transport Services

1. Application of Rates

RF Transport Services rates apply to service furnished to business customers. RF Transport Services are not available to residential customers.

2. RF Transport Service

A. General Service Offerings and Limitations

RF Transport Services utilize optical technology, including multi-wavelength optical technology over dedicated transport facilities to provide Customers with links to radiate radio frequency ("RF") coverage.

RF Transport Services connect Customer-provided wireless capacity equipment to Customer- or Company-provided bi-directional RF-to-optical conversion equipment at a hub facility. The hub facility can be Customer- or Company-provided. The conversion equipment allows the Company to accept RF traffic from the Customer and then send bi-directional traffic transmission across the appropriate optical networks. At the remote end, Customer- or Company-provided RF-to-optical conversion equipment allows bi-directional conversion between optical signals and RF signals. RF signals can be received and radiated at this remote node. Hence, the Company provides optical transit services for RF signals.

The furnishing of RF Transport Services requires certain physical arrangements of equipment and facilities of the Company and other entities and is subject to the availability of such equipment and facilities and the economic feasibility of providing such necessary equipment and facilities and the RF Transport Services.

1.0 RATES AND CHARGES

Schedule 1: RF Transport Services (continued)

2. RF Transport Services (continued)

A. General Service Offerings and Limitations (continued)

1. The specific limitations applicable to RF Transport Services are as follows:
 - (a) All optical services are provided on single mode optical fiber.
 - (b) Some optical services may be of a multi-wavelength nature.
 - (c) Current wireless standards limit the distance between a hub site and a remote node to 20 km.
 - (d) The optical loss between a hub site and a remote node must not exceed 18 dB.

B. Maximum Initial Rates

Unless otherwise provided in a contract pursuant to Rule 4 below, the Maximum Initial Rates for RF Transport Services are as follows:

DESCRIPTION	FEE PER SEGMENT
Nonrecurring connection charge	\$100,000
Monthly recurring charge	\$15,000

A Segment is a one-way optical carrier between one (1) Customer hub site or remote node, and another Customer hub site or remote node. The optical carrier is a single optical wavelength. The optical fiber can carry more than one wavelength.

C. Minimum Term

The minimum service term for RF Transport Service is five (5) years.

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Arizona Tariff No. 1
Original Sheet No. 7

1.0 RATES AND CHARGES

Schedule 2: Federal, State and Local Surcharges, Taxes and Fees

In addition to the charges for the Company's service offerings, certain federal, state, and local surcharges, taxes, and fees will be passed through to Customers to the extent permitted under applicable law. The surcharges, taxes and fees may be modified from time to time.

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NextG Networks of California, Inc.
1759 South Main Street, Suite 128
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Arizona Tariff No. 1
Original Sheet No. 8

2.0 RULES

Rule 1 — Definitions

Commission or ACC:

Arizona Corporation Commission

Company:

NextG Networks of California, Inc. d/b/a NextG Networks West

Customer:

The person, firm, corporation or other entity that orders or uses the RF Transport Service and is responsible for payment of charges and compliance with the rules and regulations of this tariff.

Facilities:

Any cable, poles, conduit, carrier equipment, wire center distribution frames, central office switching equipment, etc., used to provide services offered under this tariff.

Business Day:

All days except Saturday, Sunday, New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day.

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Robert L. Delsman
Tariff Manager

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NextG Networks of California, Inc.
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Milpitas, CA 95035

Arizona Tariff No. 1
Original Sheet No. 9

Rule 2 — Undertaking of Company

The Company's RF Transport Services are furnished for the provision of telecommunications services originating and/or terminating in any area within the State of Arizona.

The Company is a facilities-based provider of the RF Transport Service described in Schedule 1 to Customers for the direct transmission and reception of voice, data, and other types of communications. Services are offered via the Company's facilities (whether owned, leased, or under contract) in combination with telecommunications services provided by other carriers. The Company is responsible under the terms of this tariff only for the services and facilities the Company provides hereunder.

The Company's RF Transport Services are provided on a monthly basis unless otherwise provided, and are available twenty-four (24) hours per day, seven (7) days per week, subject to the availability of necessary service, equipment and facilities and the economic feasibility of providing such necessary service, equipment, and facilities.

Rule 3 — Application for Service

Service may be initiated based on a written or oral agreement between the Company and the customer. In either case, prior to the agreement, the customer shall be informed of all rates and charges for the services the customer.

To initiate a service request, the Customer must provide the following information: the Customer's name; an address to which the Company shall provide service; and a billing address (if different). The service application does not itself bind either the Customer to subscribe to the service or the Company to provide the service.

Request for service under this Tariff will authorize the Company to conduct a credit search on the Customer. The Company reserves the right to refuse service on the basis of credit history, and to refuse further service due to late payment or nonpayment by the Customer.

Rule 4 — Individual Case Basis, Special Promotions or Special Construction Contracts

The RF Transport Service is also available on a contract basis pursuant to Individual Case Basis ("ICB"), special promotions or special construction arrangements. The terms and conditions of each contract offering are subject to the agreement of both Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. The contracts will be filed in accordance with Commission rules. Unless otherwise stated herein, the prices, terms and conditions of each ICB, special promotion or special construction contract will prevail over any contrary provision of this tariff.

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Tariff Manager

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Rule 5 — Deposits

The Company may, at its sole discretion, require a deposit as a condition to receiving service or additional service. The Company reserves the right to review an applicant's or a Customer's credit history at any time to determine if a deposit is required. Deposit requirements will not be based on race, sex, creed, national origin, marital status, age, number of dependents or physical handicap.

In the event the Customer fails to establish a satisfactory credit history, deposits are a form of security that may be required from Customers to ensure payment of bills.

Deposits shall be no greater than two-and-one-half (2.5) times the estimated maximum monthly bill.

Deposits will be refunded with interest within 30 days after discontinuance of service or after 12 months of service, whichever comes first, except where the Customer has been delinquent in the payment of a bill or where the deposit has been applied to the closing bill upon discontinuance of service.

Rule 6 — Notices

A. Discontinuance of Service Notice

1. Notice by Customers

Customers are responsible for notifying the Company of their desire to discontinue service on or before the date of disconnection. Such notice must be in writing.

2. Notice by Company

Notices by Company to Customers to discontinue service will be provided in accordance with Rule 9.

B. Rules for Company Notices

Notices the Company sends to Customers or the Commission are deemed made on date of actual presentation or upon deposit, first class postage prepaid, in the U.S. Mail to the Customer's or the Commission's last known address.

Rule 7 — Rendering and Payment of Bills

- A. Service is provided and billed on a monthly (30 day) basis. Months are presumed to have 30 days. The billing date is dependent on the billing cycle assigned to the Customer.

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Arizona Tariff No. 1
Original Sheet No. 11

- B. The Customer is responsible for the payment of all charges for services furnished to the Customer. Charges are billed monthly in advance. The Company is not responsible for any telephone charges that may be incurred by the Customer in gaining access to the Company's network.
- C. Bills are payable upon receipt and are deemed past due fifteen (15) days after issuance and posting of invoice. Bills not paid within sixteen (16) days after the date of posting are subject to a one-and-a-half percent (1.5%) late payment charge for the unpaid balance, or the maximum allowable under state law. The late payment date will be prominently displayed on the Customer's bill.
- D. Customer bills shall contain the following information:
 - 1. A description of the service provided,
 - 2. The monthly recurring and nonrecurring charges for each service provided, any late payment charges, any reconnection fees, and any past due amounts,
 - 3. The Company's toll-free number for billing inquiries,
 - 4. The amount or percentage rate of any tax passed on to the Customer,
 - 5. Any access or other charges imposed by order or at the direction of the Federal Communications Commission, and
 - 6. The date on which the bill becomes delinquent.

Rule 8 — Disputed Bills

Billing disputes should be addressed to Company's customer service organization via telephone to 1-866-44NEXTG (1-866-446-3984) (408) 719-8510. Customer service representatives are available from 8:30 AM to 5:59 PM Pacific Time. Messages may be left for Customer Services from 6:00 PM to 8:29 AM Pacific Time. Messages will be answered on the next business day, except in the event of an emergency which threatens customer service, in which case Customer Service Staff may be paged. The Company will respond to the Customer complainant within five (5) working days regarding the status of the complaint.

The undisputed portion of the bill must be paid in accordance with Rule 7 of this tariff. If the undisputed portion is not paid in accordance with Rule 7, and the Company has notified the customer by written notice of such delinquency and impending termination, the service will be subject to disconnection.

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Robert L. Delsman
Tariff Manager

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In the case of a dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled with mutual satisfaction, the Customer can take the following course of action:

- A. First, the Customer may request, and the Company will perform, an in-depth review of the disputed amount. The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.
- B. Second, if there is still disagreement over the disputed amount after the investigation and review by a manager of the Company, the Customer may appeal to the Commission.

The contact information of the utilities division of the Commission is:

Arizona Corporation Commission
Utilities Division
1200 West Washington
Phoenix, AZ 85007-2996

- or -

400 West Congress
Tucson, AZ 85701-1347

Phoenix (602) 542-4251; Toll Free 1-800-222-7000 (In-State Only)

Tucson (520) 628-6550; Toll Free 1-800-535-0148 (In-State Only)

Email: mailmaster@cc.state.az.us

Rule 9 — Discontinuance of Service by Company

- A. The Company may discontinue service without notice under the following circumstances:
 - 1. There exists an obvious hazard to the safety or health of the consumer, the general population or the Company's personnel or facilities; or
 - 2. If the Company deems such discontinuance necessary to protect itself or third parties against fraud or to otherwise protect its employees, agents, facilities or services.
- B. The Company may discontinue service upon notice to the Customer under the following circumstances:
 - 1. Customer violation of any terms of any Company tariff and/or violation of the Commission's rules and regulations; or

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Arizona Tariff No. 1
Original Sheet No. 13

-
2. Nonpayment of any sum due to the Company for service more than thirty (30) days beyond the date of the invoice for such service. In the event the Company terminates service for nonpayment, the Customer may be liable for all reasonable court costs and attorneys fees; or
 3. Customer failure to meet Company's credit and deposit requirements; or
 4. Customer failure to provide Company reasonable access to its equipment and property; or
 5. Customer breach of contract for service between Company and Customer; or
 6. When necessary for Company to comply with an order of any governmental agency having jurisdiction, or any other applicable law; or
 7. Customer is engaging in any unauthorized resale of equipment or service.
- C. Where notice required, the Company will provide the following notice of disconnection:
1. Written notice of the pending disconnection will be rendered not less than five (5) days prior to the disconnection. Notice shall be deemed given upon actual presentation to the customer or upon deposit, first class postage prepaid, in the U.S. Mail to the Customer's last known address.
 2. The notice will contain the following information:
 - (a) The Customer's name and telephone number,
 - (b) The Company rules or regulations that were violated and explanation thereof, or the amount of the bill which Customer has failed to pay in accordance with Company policy, if applicable,
 - (c) The date on or after which service may be terminated, and
 - (d) A statement advising Customer to contact Company at a specific telephone number for information regarding any procedures which the Company may offer to work out a mutually agreeable solution to avoid discontinuance of the service.

D. Restoration of service

The Customer may restore service by full payment in any reasonable manner. There is a minimum \$35.00 charge for restoration of service after disconnection;

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Tariff Manager

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if, however, the equipment necessary for service has been removed, the non-recurring fee will apply.

Rule 10 — Cancellation of Service By Customer

Customer may cancel service by providing written notice to Company thirty (30) days prior to cancellation provided, however, that Customer may not cancel RF Transport Services prior to expiration of the initial five (5) year term except for rate increases of five percent (5%) over the Maximum Initial Rates.

Customer is responsible for charges while still connected to the Company's service and the payment of associated local exchange company charges, if any, for service charges.

Any non-recoverable cost of Company expenditures shall be borne by the Customer if:

- A. The Customer orders service requiring special facilities dedicated to the Customer's use and then cancels the order before such service begins, before completion of the minimum period or before completion of some period mutually agreed with the Customer for the non-recoverable portions of expenditures; or
- B. Liabilities are incurred expressly on behalf of the Customer by Company and not fully reimbursed by installation and monthly charges; and
- C. Based on a Customer's order for service, construction has either begun or has been completed, but no service provided.

Rule 11 — Credit Establishment

Each applicant for service shall provide credit information satisfactory to the Company or pay a deposit. Deposits may be avoided if the applicant provides credit history acceptable to the Company. Credit information contained in the applicant's account record may include, but shall not be limited to, account established date, "can-be-reached" number, billing name, and location of current and previous service.

Rule 12 — Prorating of Bills

Any prorated bill shall use a 30-day month to calculate the pro-rata amount. Prorating shall apply only to recurring charges. All nonrecurring and usage charges incurred during the billing period shall be billed in addition to prorated amounts.

Rule 13 — Tariff Available to the Public

A copy of this tariff schedule will be available for public inspection in the Company's business office during regular business hours.

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Tariff Manager

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NextG Networks of California, Inc.
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Arizona Tariff No. 1
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Rule 14 — Use of Service

The Company's RF Transport Service may not be used for any unlawful purpose.

The Company strictly prohibits use of the Company's services without payment, including an avoidance of payment by the Customer by fraudulent means or devices, the provision of falsified calling card numbers or invalid calling card numbers to the Company, or any misrepresentation of the identity of the Customer.

Rule 15 — Limitations of Service

Service is offered subject to the availability of the necessary facilities and/or equipment and subject to the provisions of this tariff. Company reserves the right not to provide service to or from a location where the necessary facilities or equipment are not available.

Company reserves the right to discontinue furnishing the service upon written notice to Customer, when necessitated by conditions beyond its control or when Customer is using the service in violation of the provisions of this tariff or in violation of the law.

Title to all facilities provided by Company under these regulations remains in Company's name.

Rule 16 — Interconnection

Service furnished by Company may be interconnected with services or facilities of other common carriers and private systems, subject to the technical limitations established by Company. Any special interface of equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers shall be provided at the Customer's expense.

The Customer is responsible for taking all necessary legal steps for interconnecting Customer-provided terminal equipment or communications equipment with Company's facilities. The Customer shall secure all licenses, permits, rights-of-way and other such arrangements necessary for interconnection.

Rule 17 — Liability of the Company

- A. The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, or errors, defects or negligence in any of the services or facilities furnished by the Company or by another carrier through the Company up to and including its Demarcation Point (as that term is defined in Rule 20), including any exchange, toll, or private line service provided, supplemental equipment, alphabetical directory listings and all other services, shall in no event exceed an amount equal to the pro rata charges to the Customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error, defect or negligence. In no event shall any mistake,

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omission, interruption, delay, error, defect or negligence in any one service or facility that affects or diminishes the value of any other service result in liability that exceeds the total amount of the charges to the Customer for all services or facilities for the period affected by the mistake, omission, interruption, delay, error, defect or negligence.

B. Errors in Transmitting, Receiving or Delivering Oral Messages by Telephone

The Company shall not be liable for errors in transmitting, receiving or delivering oral or other messages by equipment or facilities of the Company and connecting utilities.

Rule 18 — Responsibilities of the Customer

- A. The Customer is responsible for: placing any necessary service orders; complying with tariff terms and conditions; assuring that users comply with tariff regulations; and payment of charges for communications originated from the Customer's network.
- B. The Customer is responsible for arranging access to its premises at times mutually agreeable to Company and the Customer when required for installation, repair, maintenance, inspection or removal of equipment associated with the provision of Company services.
- C. The Customer is responsible for maintaining its equipment and facilities in good operating condition. The Customer is liable for any loss, including loss through theft, of any Company equipment installed at the Customer's premises.

Rule 19 — Special Construction

Special construction charges apply where the Company furnishes a facility or service for which a rate or charge is not specified in the Company's tariffs. Charges will be based on the costs incurred by the Company (including return) and may include:

- A. non-recurring charges;
- B. recurring charges;
- C. termination liabilities; or
- D. combinations of any of the above.

Rule 20 — Demarcation Points

The Company will provide facilities, equipment and services to the Demarcation Point. The Demarcation Point designates the end of the Company's network facilities and the

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Arizona Tariff No. 1
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beginning of the Customer's network. The Company is responsible for the provisioning and maintenance of its facilities, equipment, and services to the Demarcation Point, including those located at that point.

The Customer is responsible for the completion of services beyond the Company's Demarcation Point.

Customer-requested services beyond the Demarcation Point may be provided by the Company at the Customer's expense.

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Tariff Manager

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**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT C

Applicant will file the Affidavit of Publication after this application has been filed, as advised by Commission staff.

**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT E

NextG will offer transport and backhaul services of voice and data signals, primarily for wireless providers. NextG's "RF Transport Services" use optical technology, including multi-wavelength optical technology over dedicated transport facilities to provide telecommunications companies with more efficient transport and greater overall network service options. RF Transport Services connect customer-provided wireless capacity equipment to customer-provided or NextG-provided bi-directional RF-to-optical conversion equipment at a hub facility. The hub facility can be customer or NextG provided. The conversion equipment will allow NextG to accept RF traffic from the customer and then send bi-directional traffic transmission across the appropriate optical networks. At the remote end, NextG or the telecommunications company will provide RF-to-optical conversion equipment to allow bi-directional conversion between optical signals and RF signals. RF signals can be received and radiated at this remote node. NextG will offer service subject to the availability of the necessary facilities and/or equipment.

**NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

ATTACHMENT F

Key NextG Personnel

John B. Georges

Title: Chairman and Chief Executive Officer for NextG Networks, Inc.

Number of Years: Approximately 15 years

Type of Experience: Sale of wireless networking equipment; telecommunications contract negotiations; electrical engineering

David Cutrer

Title: Chief Technology Officer for NextG Networks, Inc.

Number of Years: Approximately 15 years

Type of Experience: Microcellular communications networks

Joseph M. Veni

Title: Vice President, Sales for NextG Networks, Inc.

Number of Years: Approximately 30 years

Type of Experience: General management, marketing, sales and engineering for wireless companies

Edward Gentile

Title: Vice President, Operations for NextG Networks, Inc.

Number of Years: Approximately 10 years

Type of Experience: Wireless engineering management and network operations including deployments of cellular, paging and microwave systems

Robert Delsman

Title: Vice President, Government Relations and Regulatory Affairs for NextG Networks, Inc.

Number of Years: Approximately 9 years

Type of Experience: Acquisition and administration of right-of-way, franchise, network real estate, and investor-owned utility agreements throughout the United States

EXHIBIT “2”



NextG Networks

City of Glendale
Initial Staff Meeting

May 12th 2009

Joe Milone

Director of Government Relations

**Empowering
Next Generation
Wireless Networks**

About NextG Networks

❖ NextG is a fiber based, carrier-neutral service provider. Using our proprietary fiber-optic technology and fiber infrastructure, NextG provide wireless capacity and coverage solutions to the wireless carriers, including data and improved 911 services.

❖ NextG Networks' provides solid balance between citizen demand for wireless services and minimizing environmental and visual impacts of telecommunications installations.

❖ NextG strives to utilize existing utility infrastructure and has a pole attachment agreements in place with Arizona *→ can be shown, but not.* Public Service and Salt River Project. Further, NextG is also proposing using city-owned facilities (light poles) in lieu of installing new utility poles.



NextG's Regulatory Status

- ❖ NextG is NOT a Wireless Service Provider, we are a Fiber Transport service using an RF over Fiber technology.
- ❖ NextG operates under the rights granted under the Telecom Act, Sections 253 and 332.
- ❖ NextG Networks is a Public Utility (CLEC) granted by a CC&N (Docket T-20377A) from the Arizona Corporations Commission to provide regulated transport services to wireless telecommunication service providers.
- ❖ NextG expects equal access to public ROW through non-discriminatory treatment and processing in the city as other regulated public utilities. This includes provisions of the Arizona Revised Statutes § 9-582, specifically related to fees and the Transaction Privilege Tax provisions . 5.4% of Gross TPT

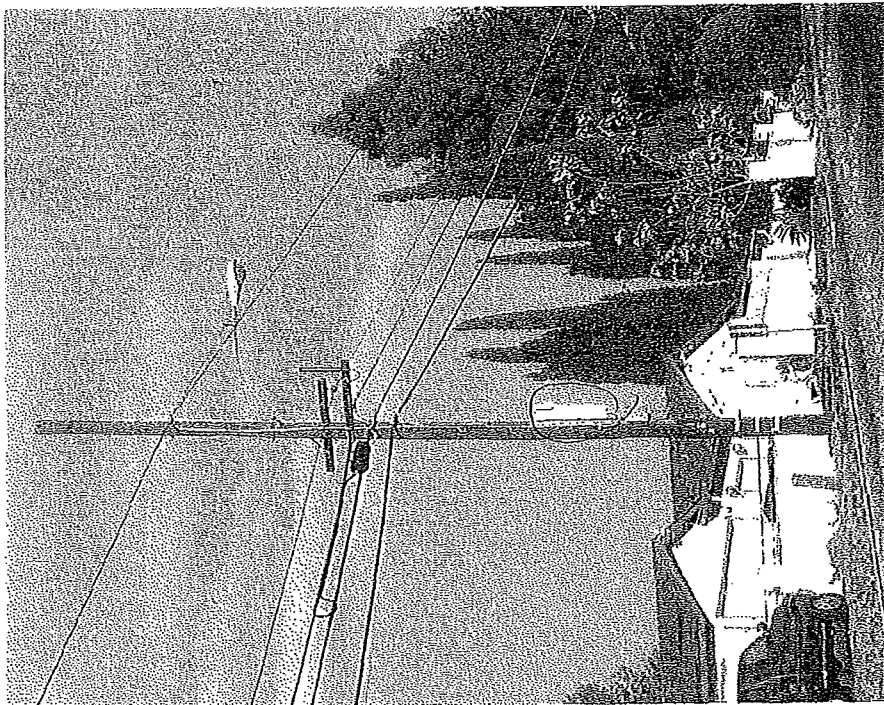
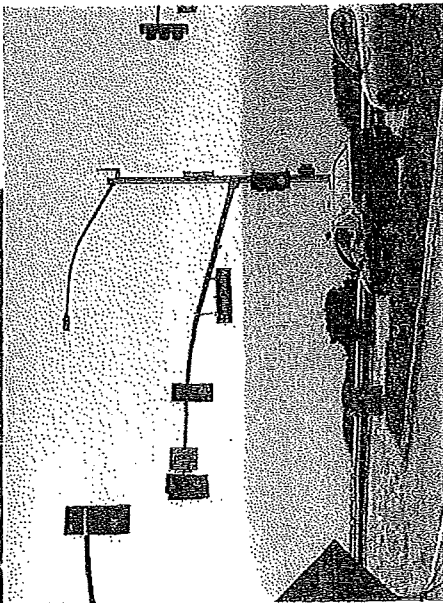
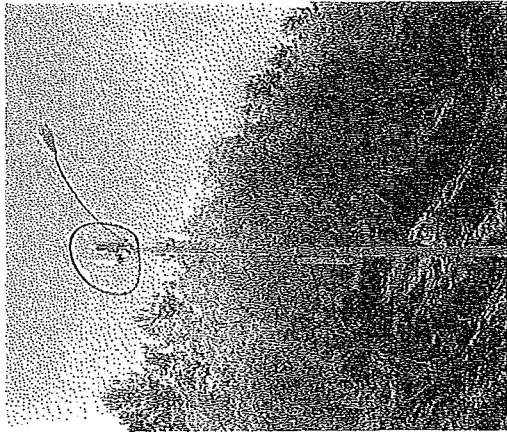


Network Facilities

- ❖ Fiber-optic cables to enable transport services from access point to customer location.
 - ❖ Aerial Fiber on existing above ground utility poles (Aerial)
 - ❖ Fiber placement in existing underground conduits and ducts (Lease Duct)
 - ❖ New fiber construction utilizing traditional trench and boring practices OR non-invasive micro-trench technology
- ❖ Electronic switching/conversion equipment.
 - ❖ Multiplexor to convert fiber optic signal to RF signal and vice-versa
 - ❖ Electric power fuse and disconnect switch
 - ❖ Wires – coax cable and Romex electrical wire
- ❖ Antenna
 - ❖ Single omni-whip or dual panel configuration which allows NextG to interface with our customers (convert RF to optical signal)



Node Pictures



NextG Networks

Company Confidential

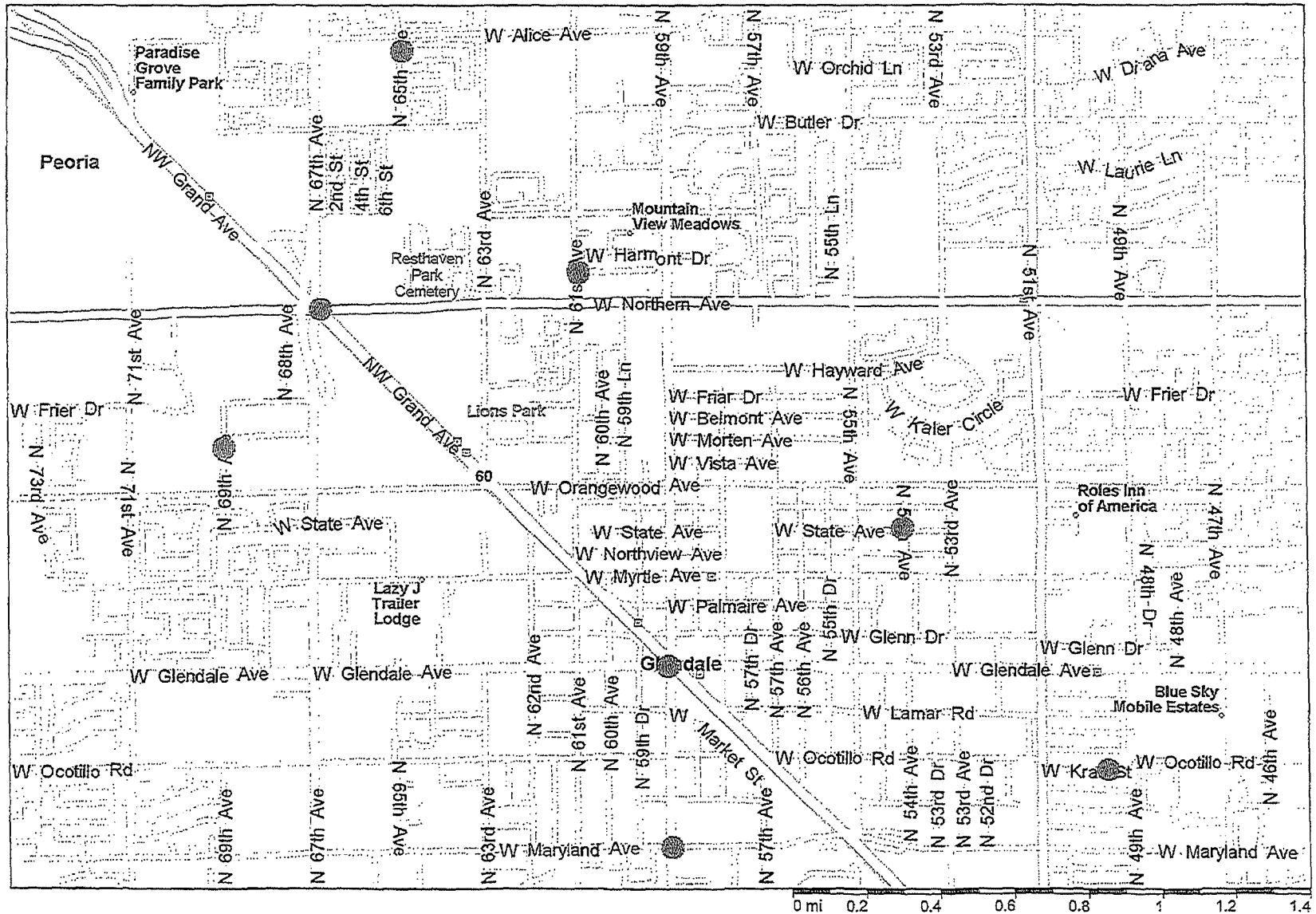
Page 5, May 11, 2009

Win-Win Solution

- ❖ The NextG Networks technology makes sense for any City and is a valuable infrastructure asset.
- ❖ Equipment is small and unobtrusive.
- ❖ Makes reliable wireless services (voice, data and E911) available in all areas of the City, especially in areas without solid coverage and traditional cell installations are not appropriate.
- ❖ Maximizes the use of existing above ground facilities vs. placing new utility poles in city.
- ❖ Opportunity for city to capture revenue for use of these public ROW and city-owned facilities.
- ❖ Network is carrier neutral and can accommodate multiple operators.



NextG - Glendale AZ Node Locations



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EXHIBIT “3”

1 **SCOTTSDALE CITY ATTORNEY'S OFFICE**

2 3939 N. Drinkwater Boulevard

3 Scottsdale, Arizona 85251

4 Telephone: (480) 312-2405

5 Bruce Washburn (SBN 015346)

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8 **Attorneys for City of Scottsdale**

9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

10 Commissioners:

11 Jeff Hatch-Miller, Chairman

12 William A. Mundell

13 Mike Gleason

14 Kristin K. Mayes

15 Barry Wong

Docket No. T-20377A-05-0484

**1) APPLICATION FOR INTERVENTION
BY CITY OF SCOTTSDALE, ARIZONA**

**2) APPLICATION FOR RESCISSION,
MODIFICATION AND/OR
ALTERATION OF CERTIFICATE OF
CONVENIENCE AND NECESSITY**

**3) COMPLAINT BY CITY OF
SCOTTSDALE AGAINST NEXTG
NETWORKS**

4) REQUEST FOR HEARING

16 IN THE MATTER OF THE
17 APPLICATION OF NEXTG
18 NETWORKS OF CALIFORNIA, INC.,
19 DBA NEXTG NETWORKS WEST FOR
20 APPROVAL OF A CERTIFICATE OF
21 CONVENIENCE AND NECESSITY
22 FOR TRANSPORT AND BACKHAUL
23 SERVICES TO OTHER CARRIERS,
INCLUDING BUT NOT LIMITED TO
WIRELESS TELECOMMUNICATIONS
SERVICES PROVIDERS AND
POTENTIALLY TO WIRELESS
INFORMATION SERVICES
PROVIDERS.

24 The City of Scottsdale, an Arizona Municipal Corporation ("the City") hereby applies to
25 the Commission for 1) an order pursuant to Ariz. Adm. Code § R14-3-105 allowing the City to
26 intervene as an interested party in the above-entitled proceedings and 2) an order rescinding,
27 modifying or altering the certificate of convenience and necessity issued by the Commission to

1 NextG Networks of California, Inc. ("NextG"). The City also submits herein complaints
2 against NextG for 1) failing to submit and/or disclose financial information and records as
3 required by law, and 2) constructing or attempting to construct facilities without having the
4 required authorization or a valid certificate of convenience and necessity. Finally, the City
5 requests that the Commission set a hearing for consideration of the issues raised by the City
6 herein. The applications and complaint are supported by the memorandum of points and
7 authorities below and the entire docket in this matter.
8

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. The City's Application to Intervene as an Interested Party.**

11 This application is made because circumstances have arisen since this Commission's
12 order granting a certificate of convenience and necessity ("CCN") to NextG causing the
13 interests of the City of Scottsdale, and other cities and towns similarly situated in the State of
14 Arizona, to be impacted. The City is a municipal corporation duly organized under the laws of
15 the State of Arizona. The City has within its jurisdiction various rights-of-way and public
16 utility easements. The City regulates its rights-of-way through various provisions of its
17 municipal code including provisions relating to wireless communications facilities ("WCF").
18 The City currently has roughly two hundred (200) separate WCF within its rights-of-way that
19 have been constructed through permits issued to various wireless communication service
20 providers such as AT&T, Verizon, T-Mobile, Cricket and NewPath Networks. Each provider
21 with a WCF in a right-of-way pays the City an annual fee for use of the City's property.
22

23 On or about March 12, 2009 the City received notice that NextG was seeking to install a

1 distributed antenna system ("DAS") in the City of Scottsdale. A DAS system typically consists
2 of individual wireless nodes, a base station and interconnecting fiberoptic cables. NextG's
3 correspondence purported to rely on a CCN already issued in this docket as authority for
4 construction. (Exhibit A.) The City responded to the initial correspondence from NextG by
5 raising some initial questions regarding the service it intended to offer and raising some legal
6 issues. (Exhibit B.) Along with this correspondence, the City provided NextG with an
7 application for a telecommunications license for the City. However, a completed application
8 was not submitted by NextG. Instead, NextG has filed a lawsuit in Maricopa County Superior
9 Court against the City asserting claimed rights under the aforementioned CCN. Specifically,
10 the lawsuit seeks a declaration from the superior court that the City's encroachment fees for
11 WCF in its rights-of-way are proscribed by the existence of NextG's CCN. The lawsuit also
12 alleges, among other things, that the City cannot question the validity of the CCN in the
13 superior court proceedings.
14

15 A. Impact to the City's Interests

16 As a municipality, the City is charged with the management, maintenance and regulation
17 of its rights-of-way. This includes a responsibility to its citizens to assure that the City receives
18 fair and reasonable compensation for the use thereof. NextG has asserted that its possession of
19 a CCN from this Commission limits the City's ability to require compensation for the use of its
20 rights-of-way. The City does not agree. The City also believes that the CCN issued by this
21 Commission was not proper. The City has reviewed the Commission's docket for this matter,
22 as well as a transcript from the hearing before an Administrative Law Judge. (Exhibit C.)
23

1 This review makes clear that the interests of the City of Scottsdale and other municipalities,
2 counties, and towns in the state of Arizona are not adequately represented. Nor was the process
3 sufficient to present a full understanding of the issues surrounding the issuance for what is
4 claimed to be a statewide CCN.

5
6 B. The City Should be Granted Permission to Intervene

7 AZ ADC R14-3-105 provides for intervention by interested persons upon an order from
8 the Commission or presiding officer. There are material questions regarding the scope and
9 extent to which NextG should have been granted a CCN, if at all. The CCN issued by this
10 Commission is claimed to substantially affect the interests of the City of Scottsdale and other
11 political subdivisions of the Arizona government similarly situated despite their not being
12 parties to the proceedings. The interests of the public and the City of Scottsdale in relation
13 thereto are not currently being represented in these proceedings. Thus, the City hereby
14 requests approval from this Commission for the City to intervene as a party to these
15 proceedings.

16 II. The City's Application for Rescission or Modification.

17 As will be outlined below, the issuance of a CCN to NextG was defective for multiple
18 reasons including 1) failure to follow the procedural requirements of law, 2) lack of evidence
19 to support the findings of the Commission, and 3) lack of jurisdiction of the Commission.
20 These defects require rescission or, at a minimum, modification of the CCN issued to NextG.

21
22 A. The CCN was Invalidly Issued with Respect to Scottsdale and other Municipalities.

23 A certificate of convenience and necessity is a creature of statute. This Commission

1 does not have plenary power regarding CCNs. That power is reserved to the legislature. *See,*
2 *e.g., Tonto Creek Estates Homeowners Ass'n v. Arizona Corp. Comm'n*, 177 Ariz. 49, 56, 864
3 P.2d 1081, 1088 (App. 1993). As such, the legislature has prescribed specific procedures for
4 the issuance of CCNs. *See* A.R.S. § 40-281 *et seq.* Specifically, the legislature has provided
5 that municipal consent is required before a CCN can be issued for a public service corporation
6 to conduct business within that municipality's boundaries:

8 B. Every applicant for a certificate shall submit to the commission evidence
9 required by the commission to show that the applicant has received the required
10 consent, franchise or permit of the proper county, city and county, municipal or
11 other public authority.

12 A.R.S. § 40-282. NextG's application for a CCN and the docket in this matter are devoid of
13 any evidence or indication that the City of Scottsdale has issued any franchise, license or
14 permit to NextG. In fact, Scottsdale has not.

15 The CCN issued by this Commission does not identify a specific area where NextG is
16 authorized to operate. Instead, the Commission's order merely concludes that such services can
17 be provided "within the State of Arizona." (Commission's Opinion and Order #68915, p. 7.)
18 This order is legally defective. Assuming *arguendo* that a statewide CCN can be issued, the
19 application for such a CCN would have to include evidence of the applicant having the required
20 franchise, license or permit from every political subdivision in the state. A.R.S. § 40-282(B).¹

21
22
23 ¹ Alternatively, the applicant can avail itself of the provisions of A.R.S. § 40-282(D)
which allow the Commission to issue a provisional order allowing a CCN upon submission of
proof of such a certificate.

1 The docket record does not demonstrate that NextG had obtained a franchise, license or permit
2 from any jurisdiction prior to seeking its CCN.

3 An order of the Commission which is issued without complying with the necessary
4 procedural requirements is void. *See Southern Pacific Transportation Co. v. Ariz. Corp.*
5 *Comm'n*, 173 Ariz. 630, 845 P.2d 1125 (App. 1992); *see also Walker v. De Concini*, 86 Ariz.
6 143, 3431 P.2d 933(1959). A.R.S. § 40-252 authorizes this Commission to rescind or modify a
7 CCN at any time. NextG's CCN should be rescinded because it is not validly issued under
8 A.R.S. § 40-281 *et seq.* At a minimum, an order should be issued making the CCN provisional
9 upon NextG obtaining the necessary franchise, license, or permit from the appropriate
10 jurisdiction.
11

12 B. The Commission does not have Jurisdiction Because NextG Provides Distributed
13 Antenna Services which are Mobile Services, and Regulation by the Commission is Preempted
14 by Federal Law.

15 The Federal Telecommunications Act ("FTA") provides:

16 3) State preemption

17 (A) Notwithstanding sections 152(b) and 221(b) of this title, **no State or local**
18 **government shall have any authority to regulate the entry of or the rates**
19 **charged by any commercial mobile service or any private mobile service,**
except that this paragraph shall not prohibit a State from regulating the
other terms and conditions of commercial mobile services.

20 47 U.S.C.A. § 332(c) (emphasis added). Although the FTA does allow a state to petition the
21 Federal Communications Commission ("FCC") for permission to regulate mobile services,
22 Arizona has not received such permission. In fact, Arizona petitioned the FCC for permission
23 to regulate the entry and rates of mobile services and was denied. *See In the Matter of Petition*

1 of Arizona Corporation Commission, To Extend State Authority Over Rate and Entry
2 Regulation of All Commercial Mobile Radio Services and In the Matter of Implementation of
3 Sections 3(n) and 332 of the Communications Act, 1995 WL 316476, 8 (F.C.C.). Thus, this
4 Commission should be especially cautious that it does not overstep the federal preemption of
5 the FTA when it has already been denied permission to do so.

6
7 C. NextG is Offering "Mobile Service."

8 As noted above, the Commission's authority does not extend to regulation of "mobile
9 services."² Mobile service is defined by Congress in 47 U.S.C.A. § 153 (27):

10 The term "mobile service" means a radio communication service carried on
11 between mobile stations or receivers and land stations, and by mobile stations
12 communicating among themselves, and includes (A) both one-way and two-way
13 radio communication services, (B) a mobile service which provides a regularly
14 interacting group of base, mobile, portable, and associated control and relay
stations (whether licensed on an individual, cooperative, or multiple basis) for
private one-way or two-way land mobile radio communications by eligible users
over designated areas of operation . . .

15 (Emphasis added.)³ In its application to this Commission, NextG describes its proposed
16 services as:

17 RF Transport Services connect Customer-provided wireless capacity equipment
18 to Customer or Company-provided bi-directional RF-to-optical conversion
equipment at a hub facility. The hub facility can be Customer- or Company-

19
20 ² Although the preemption of 47 U.S.C. § 332(c) discusses commercial mobile service and
21 private mobile service, the FCC has determined that all mobile services fall into either one
22 category or the other. *Implementation of Sections 3(N) and 332 of the Communications Act,*
Regulatory Treatment of Mobile Services, 9 F.C.C.R. 1411 (1994) ("CMRS Order").

23 ³ 47 U.S.C.A. § 153 (33) defines radio communication as "the transmission by radio of
writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities,
facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of
communications) incidental to such transmission."

1 provided. The conversion equipment allows the Company to accept RF [radio
2 frequency] from the Customer and then send bi-directional traffic transmission
3 across the appropriate optical networks. At the remote end, Customer- or
4 Company-provided RF [radio frequency]-to-optical conversion equipment allows
bi-directional conversion between optical signals and RF signals. **RF signals can
be received and radiated at this remote node. . . .**

5 (*NEXTG APPLICATION AND PETITION FOR CERTIFICATE OF CONVENIENCE AND*
6 *NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS SERVICES,*
7 ATTACHMENT B, Sheet No. 5)(emphasis added). The application also notes that it is made
8 for providing "Radio Frequency Transport and Backhaul Services." And, in its proposed tariff,
9 NextG defines its Distributed Antenna System ("DAS") as including "remote nodes," i.e., "land
10 stations," which, among other things, convert optical signals to radio signals for transmission.
11 While the ultimate receiver of this radiofrequency transmission from the "Remote Node" is
12 unidentified, it is safe to assume that the transmission is sent to a mobile telephone, a.k.a.
13 "mobile station" or "receiver."⁴ The "remote nodes" are the portion of NextG's DAS system
14 which fall squarely within the City's WCF ordinances.
15

16 NextG's apparent lack of a radio frequency license from the FCC does not change the
17 result.⁵ NextG is functionally acting as an arm for the Commercial Mobile Radio Service
18 ("CMRS") providers with whom it enters long term leases for distributed antenna nodes. In
19 connection with proposed rulemaking which requires each cell site to have backup power, an
20

21
22 ⁴ It is also noteworthy that the nodes used by NextG for transmitting and receiving the
radio communications are the only service for which a rate is prescribed in the proposed tariff.
23 (NextG Tariff, Sheet 6.)

⁵ However, the Commission must certainly question how NextG can be a "common
carrier" and a "public service company" when the primary customers it serves are large

1 FCC Committee has also determined that there is no reason to distinguish DAS from
2 traditional wireless carriers:

3 NextG explains that it provides telecommunications services to wireless carriers
4 via a network architecture that uses fiber-optic cable and small antennas mounted
5 in the public rights-of-way on infrastructure such as utility poles, street lights and
6 traffic signal poles. **NextG argues that DAS Nodes should not be treated as a**
7 **cell site** because the DAS Node does not include some of the features typically
8 associated with a cell site. The antenna is not associated with a base station or
9 network switching equipment at the DAS Node site. [citation omitted] NextG and
MetroPCS maintain that even if the Commission does treat the DAS Node as a
cell site this equipment should be exempt from the backup power rule because it
is "technologically, financially, and politically infeasible" to install eight hours of
backup power . . .

10 **We decline to exempt DAS Nodes** or other sites from the emergency backup
11 power rule. Rather, we believe that to the extent these systems are necessary to
12 provide communications services, **they should be treated similarly to other**
13 **types of assets that are subject to the rule.** We note that many of the arguments
14 made by petitioners are similar to the physical constraint arguments raised by
15 other parties. As we stated earlier, we see no reason why LECs and CMRS
providers who choose to place assets at locations with limited physical capacities
should generally be excused from compliance with the rule. We realize that many
providers have begun to use DAS and other small antenna systems as part of their
communications networks. That fact alone, however, is far outweighed by the
need to ensure a reliable communications network.

16 *IN THE MATTER OF RECOMMENDATIONS OF THE INDEPENDENT PANEL*
17 *REVIEWING THE IMPACT OF HURRICANE KATRINA ON COMMUNICATIONS*
18 *NETWORKS*, 2007 WL 2903938, 14, 22 F.C.C.R. 18013, 18030, 18030, 22 FCC Rcd. 18013 -
19 18031, 22 FCC Rcd. 18013 (emphasis added). In reality, the remote nodes offered by NextG
20 are really just signal boosters for its CMRS customers:

21 Signal boosters [footnote: Our use of the term "signal booster" in this Public
22 Notice is intended to include all manner of amplifiers, repeaters, boosters,

23 commercial mobile radio service providers who hold multi-million dollar FCC frequency
licenses.

1 **distributed antenna systems**, and in-building radiation systems that serve to
2 amplify CMRS device signals, Part 90 device signals, or extend the coverage area
3 of CMRS providers or Part 90 service licensees] are devices that amplify and/or
4 distribute wireless signals to areas with poor signal coverage, such as tunnels,
5 subways, large buildings, and rural areas. When properly installed, these devices,
which can either be fixed or mobile, can help consumers, wireless service
providers, and public safety first responders by expanding the area of reliable
service to unserved or weak signal areas

6 See FCC WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON
7 PETITIONS REGARDING THE USE OF SIGNAL BOOSTERS AND OTHER SIGNAL
8 AMPLIFICATION TECHNIQUES USED WITH WIRELESS SERVICES, WT Docket No.
9 10-4, Released: January 6, 2010 (emphasis added). The very nature of a CCN is this
10 Commission's regulation of the rates and the market entry of the company so seeking.
11 However, regulation of the rates and market entry of mobile services such as NextG by this
12 Commission is preempted by federal law. Thus, the Commission should have declined to
13 exercise jurisdiction over NextG or at least except from its regulation those portions of
14 NextG's service which involve provision of mobile radio services.⁶

15
16 D. NextG is not a Public Service Company because it is not a Common Carrier and There
17 is no Public Interest in Regulating its Business Activities.

18 The jurisdiction of this Commission is derived from the Arizona Constitution. Ariz.
19
20

21 ⁶ The City recognizes that the Commission may have issued a CCN to one or more
22 competitors of NextG who also provide DAS services. While the City agrees that competitors
23 should be treated fairly and equally by this Commission, the proper remedy when a public body
acts in excess of its jurisdiction is to rescind the acts which were taken in excess of that
jurisdiction, not perpetuate them further. Accordingly, A.R.S. § 40-252 vests this Commission
with the power to rescind, amend, or alter any previous order made by it.

1 Const., Article XV, Section 2 provides:

2 All corporations other than municipal engaged in furnishing gas, oil, or electricity
3 for light, fuel, or power; or in furnishing water for irrigation, fire protection, or
4 other public purposes; or in furnishing, for profit, hot or cold air or steam for
5 heating or cooling purposes; or engaged in collecting, transporting, treating,
6 purifying and disposing of sewage through a system, for profit; or in
7 **transmitting messages or furnishing public telegraph or telephone service,**
8 and all corporations other than municipal, operating as common carriers, shall be
9 **deemed public service corporations.**

10 (Emphasis added.) And Ariz. Const., Article XV Section 10 provides:

11 Railways heretofore constructed, or that may hereafter be constructed, in this
12 State, are hereby declared public highways and all railroads are declared to be
13 common carriers and subject to control by law. **All electric, transmission,**
14 **telegraph, telephone, or pipeline corporations, for the transportation of**
15 **electricity, messages, water, oil, or other property for profit, are declared to**
16 **be common carriers and subject to control by law.**

17 (Emphasis added.) On its face, these constitutional provisions appear to be all-encompassing.

18 However, the Arizona courts have determined that not all companies engaged in these
19 activities are public service companies. To be within the Commission's jurisdiction, a
20 company must engage in business activities which are a matter of public concern:

21 A corporation falling within the definition of "public service corporation" is
22 subject to the jurisdiction of the Arizona Corporation Commission. *General*
23 *Alarm, Inc. v. Underdown*, 76 Ariz. 235, 238, 262 P.2d 671, 672 (1953); A.R.S. §
40-202 (1985). . . .

Although *Trico Electric Cooperative v. Corporation Commission*, 86 Ariz. 27,
339 P.2d 1046 (1959), applied this definition literally, **our supreme court has**
held more recently that meeting the literal textual definition is insufficient.
In *Arizona Corporation Commission v. Nicholson*, the supreme court stated:
"To be a public service corporation, its business and activity must be such as
to make its rates, charges, and methods of operations a matter of public
concern. . . .

(Emphasis added.) *Southwest Gas Corp. v. Arizona Corp. Comm'n*, 169 Ariz. 279, 285-287, 818 P.2d 714, 720-22 (App. 1991). The issue is not whether the public may have some general interest in the services which the company provides; rather, the question is whether or not the business and activity of the company are such that its rates, charges, and methods of operation are a matter of public concern. *Arizona Corporation Commission v. Nicholson*, 119 Ariz. 257, 259, 580 P.2d 718, 720 (1978). The record in this matter demonstrates that neither the rates, charges, nor methods of operation of NextG are a matter of public concern sufficient to warrant regulation by this Commission. To guide the analysis, the courts have set forth eight important factors:

- (1) What the corporation actually does.
- (2) A dedication to public use.
- (3) Articles of incorporation, authorization, and purposes.
- (4) Dealing with the service of a commodity in which the public has been generally held to have an interest.
- (5) Monopolizing or intending to monopolize the territory with a public service commodity.
- (6) Acceptance of substantially all requests for service.
- (7) Service under contracts and reserving the right to discriminate is not always controlling.
- (8) Actual or potential competition with other corporations whose business is clothed with public interest.

See, e.g., *Gas Service Co. v. Serv-Yu Cooperative*, 70 Ariz. 235, 237-38, 219 P.2d 324, 325-36 (1956). To begin the analysis, it is useful for the Commission to look at a key factor -- that NextG's customers are not individual consumers but rather large, sophisticated customers which are not in need of Commission protection. Our Supreme Court has recognized that the purpose of regulation by the Commission is to protect public consumers from excessive and discriminatory rates and inferior service:

1 The purposes of regulation are to preserve and promote those services which are
2 indispensable to large segments of our population, and to prevent excessive and
3 discriminatory rates and inferior service where the nature of the facilities used in
4 providing the service and the disparity in the relative bargaining power of a utility
ratepayer are such as to prevent the ratepayer from demanding a high level of
service at a fair price without the assistance of governmental intervention in his
behalf.

5 *Petrolane-Arizona Gas Service v. Arizona Corporation Commission*, 119 Ariz. 257, 259, 580
6 P.2d 718, 720 (1978)(quoting *In Re Geldbach Petroleum Co.*, 56 P.U.R.3d 207 (Mo. 1964)).

7 In light of that standard, this Commission must determine if regulation of NextG's rates,
8 charges or methods of operation is in the public interest in a market where the customers have
9 more power than the company. Here, NextG does not serve the general public; instead, it does
10 business with major wireless carriers on an individual contract basis. (Testimony of Robert
11 Delsman, July 27, 2006 Hearing, 9:15-11:15.) In a marketplace dominated by the Customer, it
12 seemingly goes without saying that regulation is unnecessary.

13
14 E. NextG and the Other DAS Providers Applying to this Commission for CCNs Really
15 Seek Only Illusory Regulation from this Commission.

16 Turning to the nature of the DAS business, NextG and other DAS providers seemingly
17 have this Commission engaged in a complex game of "cat and mouse." Essentially, they seek a
18 CCN from this Commission which they apparently believe provides them some competitive
19 advantage in the marketplace, but they balk at any real regulation by this Commission.⁷ Nor is
20

21
22 ⁷ NextG can do business without a CCN. Although the City does require a CCN for a
23 "telecommunications license" in Scottsdale, that is not the exclusive way for a provider to
access the City's right-of-way. In fact, the City currently has approximately 200 wireless
communication facilities in its right-of-way and none of the respective owners have a
telecommunications license with the City. Further, the City also enters agreements allowing

1 there any reference in the statutes or rules to a class of service known as "transport and
2 backhaul services."⁸

3 Ironically, this Commission's internet information site seemingly classifies DAS
4 providers under the category of a Competitive Local Exchange Carrier ("CLEC"). Facially,
5 this may make sense because CLEC is a recognized class of service and the DAS providers
6 make numerous references to being in competition with CLECs authorized by this
7 Commission. However, this is nothing more than part of the "cat and mouse" game the DAS
8 providers are playing with this Commission.

9
10 CLEC status is recognized by this Commission's rules. *See* Ariz. Adm. Code, Title 14,
11 Chapter 2, Articles 5 and 11. However, NextG's application for a CCN is facially invalid
12 under those rules. NextG has not identified the actual number of customers within the service
13 area or the estimated number of customers to be served within the first five years of operation
14 as required by R14-2-502(A)(1)(g). Nor has it explained how it will provide local dial tone
15 service like CLECs do and how it will comply with the interconnection requirements of R14-2-
16 1111 and -1112. This is probably because NextG expressly disclaims being a CLEC despite
17 comparing itself to that status. *See* NextG Application for CC&N, Section A-14 ("[Bond]
18 [n]ot applicable because applicant does not propose to provide long distance or local exchange
19 services in Arizona."). If the DAS providers are truly competing with actual CLECs for
20

21
22
23 for conduit and/or optical fiber in the right-of-way with providers who do not have a telecommunications license.

⁸ In its application to this Commission, NextG declined to check any of the standard boxes for recognized services by this Commission including the box for "Facilities-Based"

1 business, the Commission's treatment of the DAS providers is patently unfair for the CLEC
2 providers. The CLECs have to comply with actual regulations and responsibilities imposed by
3 the Commission, while the DAS providers are simply seeking the benefits of a CCN while not
4 accepting the burdens of regulation associated therewith.⁹

5 This fact is exemplified by the failure of the DAS providers to comply with the
6 Commission's rules regarding contribution to the Universal Service Fund. Ariz. Adm. Code,
7 Title 14, Chapter 2, Article 12. In particular, R14-2-1210(B) requires that:
8

9 [a]ny telecommunications provider, which begins providing telecommunications
10 service after the effective date of this Article shall, within 30 days of beginning to
11 provide intrastate service in Arizona, provide a letter to the Administrator
12 acknowledging that provider's obligation under this Article to make monthly
13 payments for the local and/or toll portion, as appropriate, of the AUSF
14 contribution in accordance with this Article."¹⁰

15 ExteNet, another DAS provider, has engaged in similar regulatory dodging with this
16 Commission. Docket No. T-20597A-08-0320. In its Response to the Staff's First Set of Data
17 Requests, ExteNet informed the Commission that it does not even intend to have a customer
18 service center in the State. Later, when asked to explain why its rates were competitive in

19 Local Exchange Telecommunications Services." Instead, NextG simply checked the box for
20 "Other" and made up its own category of service. (NextG Application, p.1, Section A.)

21 ⁹ An examination of NextG's docket, T-20377A-05-0484, indicates that the Commission
22 has no apparent interest in regulating the DAS providers anyway. NextG was issued a CCN by
23 order of this Commission on August 29, 2006 and then filed its tariff in October, 2006. Since
that time, there has been no activity in the docket, no annual reports, no regulation, and the
Commission has decided to close its file despite NextG's continuing to do business. (August 5,
2008 Compliance Memorandum.)

¹⁰ 47 U.S.C.A. § 254(f) provides that "[e]very telecommunications carrier that provides
intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory
basis, in a manner determined by the State to the preservation and advancement of universal
service in that State."

1 comparison to competitors, ExteNet asserted, "Within ExteNet's industry, services are highly
2 customized in ICB [Individual Contract Basis] contracts, so there is no standard method for
3 charging for individual services." It then noted, "ExteNet negotiates ICB contracts for all its
4 telecommunications services." In its response to ACC staff inquiries, NextG was also quick to
5 point out that "[t]he vast majority of [NextG]'s customers, therefore, negotiate individual case
6 basis contracts. . ." Docket No. T-20377A-05-0484. NextG also made sure to point out to the
7 Commission that its "customers are sophisticated carriers and communications companies
8 experienced in negotiating charges and other contract terms . . ."

10 F. Applying the *Serv-Yu* Factors Leads to the Conclusion that the Regulation of NextG's
11 Business is not Clothed with Public Interest.

12 Returning to the factors announced in *Serv-Yu*, it is clear that NextG's business activities
13 are of a private interest, not a public one. While NextG's articles of organization are a neutral
14 consideration, the other factors do not support issuing a CCN. What NextG actually does is
15 provide Distributed Antenna Systems for commercial mobile radio services. The nature of its
16 business is fully analyzed above. There is no evidence that these services are dedicated to
17 public use; instead, they are dedicated to use by an exclusive class of large commercial wireless
18 telephone carriers who possess multi-million dollar FCC frequency licenses.¹¹ The public use
19

20
21 ¹¹ One DAS provider has expressed concern that it may not be able to sell excess fiber
22 capacity which it may have from installation of its DAS systems to large businesses or schools.
23 There is no evidence that excess capacity could not be sold without a CCN and Arizona courts
have made clear that Commission jurisdiction does not necessarily extend beyond those
functions of a public utility which are essential to its public service anyway. *See, e.g.,*
Mountain States Tel. and Tel. Co. v. Arizona Corp. Commission, 132 Ariz. 109, 115, 644
P.2d 263, 269 (App. 1982)("It is clear both under prior Arizona decisions and the decisions of

1 factor also fails. *Southwest Transmission Co-op., Inc. v. Arizona Corp. Comm'n*, noted that
2 dedication to public use is a key consideration:

3 The purposes of regulation are to preserve those services indispensable to the
4 population and to ensure adequate service at fair rates where the disparity in
5 bargaining power between the service provider and the utility ratepayer is such
6 that government intervention on behalf of the ratepayer is necessary. *Sw. Gas*,
7 169 Ariz. at 286, 818 P.2d at 721 (citing *Petrolane-Ariz. Gas Serv. v. Ariz. Corp.*
8 *Comm'n*, 119 Ariz. 257, 259, 580 P.2d 718, 720 (1978)). Competition is the
9 general rule. *Gen. Alarm*, 76 Ariz. at 238, 262 P.2d at 672. **However, when an**
10 **entity dedicates private property to a use in which the public has an interest,**
11 **it grants the public an interest in that use and must submit to regulation for**
12 **the public good.** *Ariz. Corp. Comm'n v. Nicholson*, 108 Ariz. 317, 320, 497 P.2d
13 815, 818 (1972). The right to public protection then outweighs the right of
14 competition. *Gen. Alarm*, 76 Ariz. at 238, 262 P.2d at 672.

15 213 Ariz. 427, 432, 142 P.3d 1240, 1245 (App. 2006)(emphasis added). Thus, dedication of
16 private property to public use appears to be the essence of a "public service company." NextG
17 has not designated any of its private property for public use.

18 While NextG does generally deal with telecommunications, the commodity which it
19 offers -- DAS -- is not one to be generally of a public interest. As made clear, its services are
20 dedicated to large, sophisticated wireless telephone carriers who are quite capable of ensuring
21 that they protect themselves without assistance from the Commission. The next two factors,
22 acceptance of substantially all requests for service and service under individual contracts,
23 essentially contemplate an analysis of whether or not the company is a "common carrier."

other states that a public utility may provide services which are not imbued with a public
interest and thus may not be subject to Commission regulations.").

1 NextG is not a common carrier. And while that is not always controlling, here it is persuasive
2 because of the lack of any other indication of a need for regulation.¹²

3 NextG confirms this when it states that it is a "carrier's carrier." (Testimony of Robert
4 Delsman, July 27, 2006 Transcript, 9:13-23.) NextG has also noted that most, if not all,
5 contracts are done on an individual case basis. *Id.* at 11:13-15. "Carriers' carriers" are not
6 "common carriers." The case of *Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C.
7 Cir. 1999), is instructive. In *Virgin Islands Telephone*, AT&T contracted with a subsidiary,
8 ATT-SSI, to install underwater fiber optic cable between the U.S. mainland and Virgin Islands.
9 The FCC classified ATT-SSI as a non-common carrier and a competing carrier challenged the
10 classification.¹³ In reviewing the FCC decision, the D.C. Circuit upheld the classification as a
11 non-common carrier noting that 1) ATT-SSI did not sell its capacity directly to the public, and
12 2) ATT-SSI engaged in individual price negotiations with customers on price and terms
13 depending on needs, duration of contract, and technical specifications. Thus, the court held
14 that a company will not be a common carrier where its practice is to make individualized
15 decisions in particular cases whether and on what terms to serve. Here, such individualized
16 decisions are the mainstays of NextG's business model. The *Virgin Islands Telephone* court
17 also declined to look to the customer's customers to determine common carrier status. 198
18 F.3d at 926-30. Similarly, in *Southwest Gas Corp. v. Arizona Corp. Com'n*, this Commission
19
20

21
22 ¹² The court in *American Cable Tel. v. Ariz. Public Service Co.*, 143 Ariz. 273, 693 P.2d
23 928 (App. 1983), noted that for a message transmitting company to be a public service
company it must be a common carrier.

¹³ The classification as a non-common carrier allowed ATT-SSI to avoid various
regulations and requirements imposed by the FCC upon common carriers.

1 declined to treat a wholesaler of natural gas as a public service corporation in part because of
2 its limited base of approximately ten customers. 169 Ariz. 279, 285-287, 818 P.2d 714, 720-22
3 (App.1991). NextG is a "carrier's carrier" providing a few major industry players with signal
4 boosting services on an individual case basis. It is not a common carrier.¹⁴

5
6 The final factor for consideration is whether or not there is potential competition with
7 other companies whose business is clothed with public interest. This also fails. Although
8 NextG suggests that it may compete with CLECs, it expressly does not offer local exchange
9 service. And, there is no evidence in the record of the docket to suggest that CLECs are
10 offering distributed antenna systems to the major wireless carriers in competition with NextG
11 or any other DAS providers.

12 When the *Serv-Yu* factors are considered, NextG's claim that it is a public service
13 company fails on all counts. There is no evidence to support the conclusion that the public has
14 an interest in the regulation of NextG's business.

15 **III. The City's Complaint Against NextG's Business Activities.**

16 **A. NextG has not Made Available its Financial Records and Contracts as Required by Law.**

17 A.R.S. § 40-365 provides:

18 Under rules and regulations the commission prescribes, every public service
19 corporation shall file with the commission, **and shall print and keep open to**

20
21 ¹⁴ NextG may rely upon *Southwest Transmission Co-op., Inc. v. Arizona Corp. Com'n*,
22 but this is misplaced. Although the cooperative that was found to be a public utility did not sell
23 directly to customers, it was a cooperative formed by members who did. Further, the
cooperative was already subject to regulation under federal law. Thus, on those facts, which do
not exist in NextG's case, a public utility was found. 213 Ariz. 427, 429, 142 P.3d 1240,
1242 (App. 2006).

1 **public inspection, schedules showing all rates, tolls, rentals, charges and**
2 **classifications to be collected or enforced, together with all rules, regulations,**
3 **contracts, privileges and facilities which in any manner affect or relate to**
4 **rates, tolls, rentals, classifications or service.** The commission may, from time
5 to time, approve or fix rates, tolls, rentals or charges in excess of or less than
6 those shown by the schedules. The commission may, from time to time,
7 determine and prescribe by order such changes in the form of the schedules as it
8 finds expedient, and modify the requirements of any of its orders, rules, or
9 regulations.

10 (Emphasis added.) In the litigation mentioned above, the City has requested financial records
11 and customer contracts, but NextG has refused to provide them. This is a clear violation of the
12 statute.¹⁵ NextG should be ordered to file all of its contracts with this Commission and provide
13 a copy of the requested information to the City.

14 B. NextG is Misrepresenting the Nature of its Business.

15 In its letter to the City of Scottsdale, NextG specifically claimed that it did not provide
16 wireless services. (Exhibit A.) NextG appears to routinely make this assertion because of its
17 recognition that the fact that it seeks to install wireless communication facilities undermines its
18 position with this Commission due to the preemption of 47 U.S.C. § 332. However, when
19 convenient for its own purposes, NextG does not hesitate to claim rights under the very statute
20 it claims does not apply to NextG's business. (See NextG Letter to City of Glendale asserting

21 ¹⁵ The City is aware that the Commission Rules suggest that such information may be
22 withheld. Ariz. Adm. Code § R14-2-1115. However, in light of the clear mandate of the
23 statute, the Commission is without authority to enact contradictory rules. See e.g., *Arizona*
 State Bd. of Regents ex rel. Arizona State University v. Arizona State Personnel Bd., 195
 Ariz. 173, 175, 985 P.2d 1032, 1034 (1999); *Phelps Dodge Corp. v. Arizona Elec. Power Co-*
 op., Inc., 207 Ariz. 95, 111-112, 83 P.3d 573, 589 - 590 (App. 2004).

1 rights under an FCC Ruling regarding wireless siting applications, Exhibit D.)¹⁶ NextG has
2 made similar misrepresentations in its business dealings claiming it is actually a local exchange
3 carrier. (Exhibit E, NexG Power Point Presentation to City of Glendale.)

4 **IV. CONCLUSION.**

5 The City should be granted permission to intervene in this docket. Proceedings have
6 already occurred which NextG claims affect the City's rights, but the City was never provided
7 notice or made a party to the proceedings. In addition, the CCN already issued to NextG is
8 void for failure to obtain the City's consent to NextG conducting operations within the City.
9 This Commission also lacks jurisdiction over NextG's services because it is preempted by
10 federal law. NextG offers distributed antenna systems to customers who are primarily wireless
11 telephone carriers, such as AT&T. These services involve the transmission and receipt of
12 radiofrequency signals and meet the definition of mobile services. Thus, this Commission is
13 preempted by 47 U.S.C. § 332(c) from exercising jurisdiction -- at least to the extent of the
14 wireless services provided by NextG. Even if jurisdiction is not preempted by federal law, this
15 Commission should decline to regulate because NextG's business activities are not clothed
16 with a public interest to make them a public service company. To the contrary, NextG's
17
18

19
20 ¹⁶ The FCC Ruling in question established timeframes under which municipalities had to
21 act upon applications for permits to install wireless communication facilities. *See IN THE*
22 *MATTER OF PETITION FOR DECLARATORY RULING TO CLARIFY PROVISIONS*
23 *OF SECTION 332(C)(7)(B) TO ENSURE TIMELY SITING REVIEW AND TO*
PREEMPT UNDER SECTION 253 STATE AND LOCAL ORDINANCES THAT
CLASSIFY ALL WIRELESS SITING PROPOSALS AS REQUIRING A VARIANCE, 24
F.C.C.R. 13994, 13994 (Nov., 2009).

1 services are offered primarily on an individual case basis to a small market of large
2 commercial wireless providers in a marketplace where the customers have more power than
3 the providers.

4 The City respectfully requests that this Commission: 1) grant the City leave to intervene
5 in these proceedings, 2) schedule a hearing to determine if NextG's CCN should be rescinded,
6 modified or altered in accordance with A.R.S. § 40-252 and 3) order NextG to disclose
7 financial records and contracts in accordance with A.R.S. § 40-365.
8

9 **RESPECTFULLY SUBMITTED** this 31st day of August, 2010.

10 **SCOTTSDALE CITY ATTORNEY'S OFFICE**

11 By: 

12 Bruce Washburn, City Attorney
13 Eric C. Anderson, Assistant City Attorney
14 3939 North Drinkwater Boulevard
15 Scottsdale, Arizona 85251
16 Attorneys for City of Scottsdale
17
18
19
20
21
22
23

1 **ORIGINAL** and 13 copies of the
2 foregoing filed this 3/15 day of
3 August, 2010 with:

4 Arizona Corporation Commissions
5 Docket Control
6 1200 West Washington Street
7 Phoenix, AZ 85007

8 **COPY** of the foregoing delivered this
9 3/15 day of August, 2010, to:

10 Arizona Corporation Administration
11 Teena Wolfe, Administrative Law Judge
12 1200 West Washington Street
13 Phoenix, AZ 85007

14 **COPY** of the foregoing mailed this
15 3/15 day of August, 2010, to:

16 Thomas H. Campbell
17 LEWIS AND ROCA, LLC
18 40 North Central Avenue
19 Phoenix, AZ 85004
20 On behalf of NextG Networks of California, Inc.,
21 Dba NextG Networks West

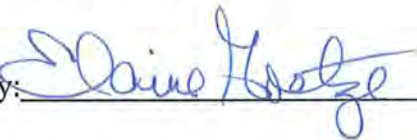
22 T. Scott Thompson
23 DAVIS, WRIGHT, TREMAINE, LLP
1919 Pennsylvania Avenue NW, Suite 200
Washington, DC 20006
On behalf of NextG Networks of California, Inc.,
Dba NextG Networks West

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

1 Ms. Janice M. Alward
2 Chief Counsel, Legal Division
3 Arizona Corporation Commission
4 1200 West Washington Street
5 Phoenix, AZ 85007

6 Ms. Lyn Farmer
7 Chief Administrative Law Judge, Hearing Division
8 Arizona Corporation Commission
9 1200 West Washington Street
10 Phoenix, AZ 85007

11 Keith Layton
12 Staff Attorney, Legal Division
13 On behalf of the Commission's Utilities Division Staff
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, AZ 85007

17 By: 
18
19
20
21
22
23

A



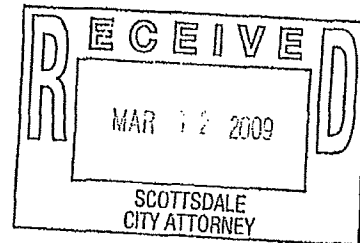
NextG Networks

8000 Research Forest Dr, #115-250 • The Woodlands, TX • 77382

~~cc: CITY ATTORNEY~~

March 10, 2009

CITY OF SCOTTSDALE
Attn: Mr. David Ellison, Assistant City Manager
3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251



***RE: NextG Networks Inc., Request for License to Use the Public
ROW for the Provision of Regulated Telecommunications
Services***

Dear Mr. Ellison

Please accept this letter as the formal application of **NEXTG NETWORKS OF CALIFORNIA INC.**, a Delaware corporation *dba* **NextG Networks West** ("NextG") to deploy its fiber optic-based network facilities in the public rights of way in the City of Scottsdale. As part of this network deployment, NextG Networks is requesting an appropriate form of authorization from Scottsdale (the "City") to conduct business as a state regulated public utility providing telecommunication services with infrastructure located in public ways. This request is submitted to the City in accordance with § 253 of the federal Telecommunications Act of 1996, Section 9-583 of the Arizona State Statutes, and Chapter 47, Article VI of the City of Scottsdale Municipal Code governing the regulation of public utilities in the city rights of way. PLEASE NOTE: This is not a solicitation. NextG Networks is a state certified public utility seeking direction on the approval/permit process required to deploy it's network facilities in the public right-of-way.

Telephone (281) 205-9185 • Fax (281) 205-9184

A. Any Necessary Approvals, License or Agreement.

NextG hereby requests authorization in the form of a license or agreement from the City of Scottsdale in order to install, operate, and maintain fiber optic cable and associated equipment, including optical repeaters and antennae, on, over, and under the public way in the City in connection with the delivery of state regulated services provided by NextG as a carrier's carrier to its wireless carrier customers. As a certificated regulated Telecommunications Company in the state of Arizona, NextG is willing to comply with the process requirement imposed on other public utilities operating in the city. If the City owns any of its streetlights or utility poles and is interested in co-location, NextG would also seek permission to attach to these facilities as well.

B. Information about NextG.

Information about NextG and its technology and services is contained in a separate document entitled "NextG Benefits to Cities" enclosed with this application letter. Additional information can be supplied to the City upon request.

C. NextG Business Model.

NextG is a fiber-based network system, providing an optical-to-radio frequency ("RF") conversion and RF transport services. NextG Networks is NOT a wireless service provider, as we do not own spectrum or sell wireless services to consumers or other third parties. However, NextG Networks' customers are the wireless carriers themselves. When an operator cannot cover an area with traditional antenna/cell sites, they often turn to NextG's service to fill this gap in coverage. NextG's services will amplify capacity and extend the carrier's RF signals in these coverage areas. NextG customers will then be able to offer improved service to their customers (consumer wireless phone user) under agreements through which NextG will construct and operate fiber-fed node networks. Although, NextG Network's equipment includes small antennae, they should not be classified as wireless communication facilities. The purpose of an antenna in our network is to interface and convert our customer's RF signal into an optical signal for transport over our fiber network.

D. Regulatory Status.

NextG is a state regulated utility, having been granted a Certificate of Convenience and Necessity ("CCN") Docket #T-20377A-05-0484 from the Arizona Corporations Commission of. This certificate classifies NextG as public service corporation providing state regulated telecommunication services. NextG's status and services are not cellular, PCS or other wireless services, which is an important distinction in how NextG is to be seen by the City.

E. Use of Poles and Streets; Trenching.

NextG Networks facilities depend on the ability to attach to existing utility infrastructure. Towards that end, NextG Networks has entered into agreements with Arizona Public Service and Qwest Communications to attach to their utility poles within their respective service areas.

As previously mentioned, if the City is interested in making any City-owned streetlight and traffic light poles (collectively "poles") available for the deployment of our network equipment, NextG would be willing to do so in lieu of installing new utility poles in areas where there are no above ground utility poles.

F. Compensation to City.

NextG will compensation the city for the use of its right-of-way use agreement consistent with the requirements of Arizona Statutes Section 9-583(B) including i.) a reasonable application fee ii.) a transaction privilege tax, and; iii.) appropriate construction/encroachment permit fees. NextG is also offering to pay Five Hundred Dollars (\$500.00) per City-owned pole utilized per annum. In addition, NextG desires to negotiate terms for the use of any City-owned fiber and/or conduit space that may be available.

As NextG is a new service type and our network design incorporates various telecommunications technologies, we expect and understand that this initial submittal will probably raise additional questions from the city. We

have found it more efficient and productive to schedule an initial meeting as a follow up to this application package and would request that be the next step. If you have any further questions, please do not hesitate to contact me at (281) 205-9185 . I look forward to hearing from you soon.

Regards,
NEXTG NETWORKS, INC.



Joe Milone
Director of Government Relations

Enclosures: - NextG Networks Certificate of Public Need and Convenience (CPCN)
 --NextG Benefits to Cities
 --NextG Press Release - Network Deployment in Del Mar, CA

CC: ~~Ms. Deborah Robberson, Esq., City Attorney, City of Scottsdale~~
 Mr. Patrick Ryan, Esq. NextG Networks Outside Counsel



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 29 2006

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
NEXTG NETWORKS OF CALIFORNIA, INC.
DBA NEXTG NETWORKS WEST FOR
APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
TRANSPORT AND BACKHAUL SERVICES TO
OTHER CARRIERS, INCLUDING BUT NOT
LIMITED TO WIRELESS
TELECOMMUNICATIONS SERVICES
PROVIDERS AND POTENTIALLY TO
WIRELESS INFORMATION SERVICES
PROVIDERS.

DOCKET NO. T-20377A-05-0484

DECISION NO. 68915

OPINION AND ORDER

DATE OF HEARING: July 27, 2006

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Wolfe

APPEARANCES: Thomas H. Campbell, LEWIS AND ROCA, LLP, on
behalf of NextG Networks of California, Inc. dba NextG
Networks West;

T. Scott Thompson, COLE, RAYWID & BRAVERMAN,
LLP, on behalf of NextG Networks of California, Inc. dba
NextG Networks West; and

Keith Layton, Staff Attorney, Legal Division, on behalf of the
Commission's Utilities Division Staff.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On July 1, 2005, NextG Networks of California, Inc. dba NextG Networks West
("NextG" or "Applicant") filed with the Commission an application for a Certificate of Convenience

1 and Necessity ("Certificate") to provide private line and intrastate access services in order to supply
2 transport and backhaul services to other carriers, including but not limited to wireless
3 telecommunications services providers and potentially to wireless information services providers
4 within the State of Arizona.

5 2. On August 17, 2005, the Commission's Utilities Division Staff ("Staff") docketed a
6 copy of a letter informing Applicant of further information required for Staff to complete its analysis
7 of the application.
8

9 3. On October 17, 2005, Applicant docketed its responses to Staff's request for
10 additional information.

11 4. On June 6, 2006, Staff filed a Staff Report on the application, recommending approval
12 subject to certain conditions.

13 5. On June 16, 2006, a Procedural Order was issued setting the matter for hearing to take
14 place on July 27, 2006, and setting associated procedural deadlines.

15 6. On July 14, 2006, NextG filed an Affidavit of Publication demonstrating that notice of
16 the application was published in *The Arizona Republic*, a newspaper of general circulation in the
17 requested Certificate service area, on June 30, 2006. No requests for intervention were filed.
18

19 7. On July 26, 2006, Thomas H. Campbell and Michael T. Hallam filed a Motion and
20 Consent of Local Counsel for *Pro Hac Vice* Admission of Scott Thompson.

21 8. The hearing convened as scheduled on July 27, 2006. Admission *pro hac vice* was
22 granted to Scott Thompson at the commencement of the hearing. Applicant and Staff appeared
23 through counsel and presented evidence. No members of the public appeared to provide public
24 comment.
25

26 9. NextG is organized under the laws of Delaware as a C corporation, and has been
27 authorized to do business in Arizona since December 23, 2004.
28

1 10. NextG plans to offer private line and intrastate access services in order to provide
2 transport and backhaul services of voice and data signals, primarily for wireless providers. NextG's
3 "RF Transport Services" use optical technology, including multi-wavelength optical technology, over
4 dedicated transport facilities to provide telecommunications companies with more efficient transport
5 and greater overall network service options. RF Transport Services connect customer provided
6 wireless capacity equipment to customer-provided or NextG provided bi-directional RF-to-optical
7 conversion equipment at a hub facility. The hub facility can be customer or NextG provided. The
8 conversion equipment will allow NextG to accept RF traffic from the customer and then send bi-
9 directional traffic transmission across the appropriate optical networks. At the remote end, NextG or
10 the telecommunications company will provide RF-to-optical conversion equipment to allow bi-
11 directional conversion between optical signals and RF signals. RF signals can be received and
12 radiated at this remote node. NextG will offer service subject to the availability of the necessary
13 facilities and/or equipment. NextG currently has plans to operate in 27 states, and has commenced
14 operations in California, Georgia and Illinois. At the hearing, NextG's witness testified that NextG
15 plans to commence provision of service in Arizona within one year of receiving a Certificate.
16

17 11. NextG states in its application that it will rely on the financial resources of its parent
18 company, NextG Networks, Inc. The Staff Report states that the 2005 financial statements provided
19 by NextG list total assets of \$44,638,000, total equity of \$17,514,000, and net income of
20 (\$5,739,000).
21

22 12. The Staff Report states that NextG's parent and affiliates operate in 8 states and have
23 approximately 36 employees and 11 contract workers with more than 150 years of combined
24 experience in the wireless industry.
25

26 13. The application states that on March 9, 2005, the City and County of San Francisco
27 filed a complaint against NextG associated with a dispute between NextG and the City regarding
28

1 NextG's ability to construct in the public rights-of-way. Staff states in its Staff Report that on
2 January 19, 2006, Staff received a copy of a January 12, 2006 Order of the California Public Utilities
3 Commission (CPUC Decision 06-01-006) finding on behalf of NextG. Staff noted that the complaint
4 did not involve issues related to customer service, but only jurisdictional issues raised by the City.
5 NextG certified that neither the Applicant nor any of its officers, directors, partners or managers have
6 been or are currently involved in any other formal or informal complaint proceedings pending before
7 any state or federal regulatory commission, administrative agency, or law enforcement agency, or in
8 any civil or criminal investigations, and that NextG's parent and affiliates have not had an application
9 for service denied, or authority revoked, in any state.
10

11 14. Applicant has the financial, technical, and managerial capabilities to provide the
12 private line services and intrastate access services it is requesting authority to provide.

13 15. Applicant will be providing service in areas where incumbent local exchange carriers
14 ("ILECs"), along with various competitive local exchange carriers ("CLECs") and interexchange
15 carriers ("IXCs") are providing telephone and private line services.
16

17 16. Staff recommended that Applicant's proposed services be classified as competitive
18 because there are alternatives to Applicant's services; Applicant will have to convince customers to
19 purchase its services; Applicant has no ability to adversely affect the local exchange or interexchange
20 service markets; and Applicant will therefore have no market power in those local exchange or
21 interexchange service markets where alternative providers of telecommunications services exist.
22

23 17. It is appropriate to classify all of Applicant's authorized services as competitive.

24 18. NextG's proposed tariff lists a maximum rate for its proposed private line services and
25 intrastate access services. Staff reviewed NextG's proposed tariff, and states that while it lists a
26 maximum rate, NextG's proposed tariff is based on actual rates, and notes that Commission rules
27 require that the rate charged for a service may not be less than a company's total service long-run
28

1 incremental cost of providing the service. Staff states that since the services to be offered are highly
2 competitive and targeted for sophisticated carriers and communications companies experienced in
3 negotiating charges and other contract terms for point-to-point wireless voice and data services, Staff
4 believes the proposed rates are just and reasonable. Staff also notes that the majority of NextG's
5 customers are expected to purchase services under individual case basis ("ICB") arrangements and
6 pricing. Staff stated that while it considered the fair value rate base ("FVRB") information submitted
7 by the Applicant, it did not believe the information deserved substantial weight in setting Applicant's
8 rates.
9

10 19. The rates proposed by the application are for competitive services, and in general,
11 rates for competitive services are not set according to rate of return regulation. Staff obtained
12 information from the Applicant that indicates its FVRB is zero. Staff has reviewed the rates to be
13 charged by the Applicant and believes they are just and reasonable as they are comparable to those of
14 other competitive local carriers offering service in Arizona and comparable to the rates Applicant
15 charges in other jurisdictions. The rates to be ultimately charged by Applicant will be heavily
16 influenced by the market. Because of the nature of the competitive market and other factors, a FVRB
17 analysis is not necessarily representative of Applicant's operations.
18

19 20. Staff recommends that Applicant be granted a Certificate to provide the requested
20 intrastate telecommunications services subject to the condition that Applicant docket tariffs for each
21 certificated service conforming to the tariffs proposed in the application, within 365 days from the
22 date of an Order in this matter or 30 days prior to providing service, whichever comes first, and that
23 the Certificate should become null and void after due process if it does not timely comply with the
24 condition.
25

26 21. Staff further recommends the following:

- 27 (a) that Applicant be ordered to comply with all Commission rules, orders, and
28 other requirements relevant to the provision of intrastate telecommunications
services;

- (b) that Applicant be ordered to abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- (c) that Applicant be required to notify the Commission immediately upon changes to Applicant's name, address, or telephone number; and
- (d) that Applicant be ordered to cooperate with Commission investigations including, but not limited to customer complaints.

22. Staff's recommendations, as set forth herein, are reasonable.

23. Applicant's fair value rate base is determined to be zero for purposes of this proceeding.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide private line and intrastate access services in order to supply transport and backhaul telecommunications services in Arizona as conditioned by Staff's recommendations to other carriers, including but not limited to wireless telecommunications services providers and wireless information services providers within the State of Arizona.

7. The telecommunications services that Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. The maximum rates in Applicant's proposed tariffs are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of NextG Networks of California, Inc. dba NextG Networks West for a Certificate of Convenience and Necessity for authority to provide private line and intrastate access services in order to supply transport and backhaul telecommunications services to other carriers, including but not limited to wireless telecommunications services providers and wireless information services providers, within the State of Arizona shall be, and is hereby, granted, conditioned upon NextG Networks of California, Inc. dba NextG Networks West's timely compliance with the following Ordering Paragraph.

IT IS FURTHER ORDERED that NextG Networks of California, Inc. dba NextG Networks West shall file with docket control, as a compliance item in this case, within 365 days of this Decision or 30 days prior to the commencement of service, whichever comes first, tariffs for each service authorized herein conforming to the tariff pages filed with its application.

IT IS FURTHER ORDERED that if NextG Networks of California, Inc. dba NextG Networks West fails to meet the timeframe outlined in the Ordering Paragraph above, the Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that NextG Networks of California, Inc. dba NextG Networks West shall comply with all of the Staff recommendations set forth in Findings of Fact No. 21 above.

...


...

...

1 IT IS FURTHER ORDERED that the services NextG Networks of California, Inc. dba NextG
2 Networks West is authorized to provide herein are hereby classified as competitive.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
6  
7 CHAIRMAN COMMISSIONER

8
9   
10 COMMISSIONER COMMISSIONER COMMISSIONER

11
12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 29th day of August, 2006.

17 
18 BRIAN C. McNEIL
19 EXECUTIVE DIRECTOR

20 DISSENT _____

21 DISSENT _____

22 TW:mj

23

24

25

26

27

28

29



NextG Networks

Empowering Next Generation Wireless Networks:

Municipal Benefits from NextG Deployment

Wireless Industry Context

In order to accommodate customer demand for additional voice traffic (2G) and the introduction of broadband wireless data services (2.5G, 3G, WiFi [802.11b]), it is estimated that wireless operators will need to triple the number of wireless sites dedicated to expanding their networks by 2006. Developing such an ambitious wireless footprint will require creative solutions to meet coverage and capacity demands. NextG Networks is committed to providing wireless operators with a flexible fiber network architecture that delivers wireless microcell sites for deployment in areas that would be difficult or impossible to cover using traditional means.

NextG Brings Needed Solutions to Cities

In order to meet the demand of their wireless customers (many of whom have abandoned LAN-line wired telephone service), carriers must find ways to increase both the quality of their coverage and their caller traffic capacity. The high-site macrocell networks currently in place are mature and offer basic coverage, albeit with inadequate capacity. The result for many callers is the frequent inability to place a call and dropped or interrupted calls. Adding more high-site macrocells can fix coverage holes, but this traditional solution cannot address the problem that each carrier has a limited amount of spectrum to be used by its customers in the coverage area of each macrocell site.

Microcell sites at street-level offer a solution to the capacity limitations currently facing carriers by allowing the frequent re-use of carriers' existing spectrum. Because the coverage area of each microcell site is only 10-20% of the coverage shadow cast by each traditional macrocell site, the same spectrum can be re-used 5-10 times as customers move and hand off their calls among the resulting larger number of microcells handling traffic at street level instead of broadcasting from high-rise buildings. Wireless carriers know that they will have to migrate to a microcellular architecture in the near future to address the need for better coverage and increased capacity that 3G and broadband service will

Contact: NextG Networks, Inc.; 8000 Research Forest Drive, Suite 115-110, The Woodlands, TX 77382
www.nextgnetworks.net

6/1/2005



NextG Networks®

NEXTG LAUNCHES DAS WIRELESS NETWORK IN LESS THAN EIGHT MONTHS

Innovative Network Enhances Wireless Performance For Ocean-Side Community

San Jose, CA- January 23, 2007 – NextG Networks, the leading provider of Distributed Antenna System (DAS) networks, announced it launched a DAS Network in Del Mar, California, which was fully operational in less than eight months. The Network enhances the wireless performance for the ocean-side community by filling in coverage gaps and increasing the capacity of the existing infrastructure.

"The NextG DAS Network is a carrier-class system that was installed and carrying traffic in record time," said Steve Casey, Cingular's executive director of network operations. "It is a significant cooperative project enabling us to provide coverage and support for our new high-speed wireless services for the residents and visitors to Del Mar."

Equally important to enhancing the mobile performance for this ocean-side community, NextG's system met the city's desire for unobtrusive network equipment with minimal impact to the environment.

"The City of Del Mar has a long-standing commitment to preserving our community's natural setting," said Del Mar City Council member Crystal Crawford, who was mayor during the development and launch of the network. "I really appreciated how NextG Networks worked with us to make the DAS Network as unobtrusive as possible. As a long-time cellular customer, I can personally attest to the improved mobile coverage."

NextG's DAS Networks use strategically placed low-power, fiber-optic-fed antenna nodes that blend very well with the surrounding landscape by using existing street lights and utility poles. The DAS Networks also are protocol-neutral, scaling easily to support multiple wireless carriers, services, and technologies.

"The challenge in cities such as Del Mar is to design and deploy a mobile communications system that is not noticed by most residents, yet supports the carriers' services for voice, instant messaging, ringtone downloads, Internet surfing and all the new services," said John Georges, CEO and co-founder of NextG Networks. "This Network can support any carrier that wants to offer service in Del Mar."

###

B



"Most Livable City"
U.S. Conference of Mayors

INFORMATION SYSTEMS

7384 E. 2ND STREET
SCOTTSDALE, AZ 85251

(480) 312-2622 PHONE
(480) 312-2623 FAX

Kevin Sonoda
City of Scottsdale
7384 E. 2nd Street
Scottsdale, AZ 85251

April 23, 2009

Mr. Joe Milone, Director of Government Relations
NextG Networks
8000 Research Forest Dr., #115-250
The Woodlands, TX 77382

Re: March 10, 2009 Correspondence

Dear Mr. Milone,

Your March 10, 2009 correspondence directed to David Ellison has been forwarded to my office for response. I have also conferred with the City's legal department regarding the matters stated therein. At the outset, please be advised that your letter cannot be accepted by the City as a formal application for deployment of a fiber optic-based network facilities in the public rights-of-way (ROW).

For your convenience, I have enclosed the City's standard application form for obtaining a telecommunications license from the City. While you should feel free to complete and submit the application for a telecommunications license, you should be advised that the City does not agree with the positions stated in your letter.

A telecommunications license can be issued under § 47-161 *et seq.* of the Scottsdale City Code if the criteria stated therein are met. After submission of a properly completed application, the City will determine if it is appropriate to issue a telecommunications license. You should also be aware that the City also allows installation of underground cables in the ROW through an appropriate contractual agreement which does not require the issuance of a telecommunications license. Most recently, the City reached an agreement with a dark fiber company for permission to encroach upon the ROW at a price of \$1.81 per lineal foot. I will also note that the City has some questions whether or not the CC&N held by NextG was properly issued by the Arizona Corporation Commission.

I have also reviewed the nature of the facilities which NextG proposes to install. From that review, it is apparent that the proposed network includes the installation of wireless communication facilities ("WCF") within the meaning of the Scottsdale Zoning Ordinance, § 7.200(H). The installation of WCF in the City's rights of way is not allowed under a City telecommunications license alone. In fact, all WCF currently installed in the City's rights of way belong to companies who do not have a telecommunications license with the City.

There is a separate approval and permitting process for each proposed WCF site which you will find outlined in the Zoning Ordinance. There are also separate permitting fees and annual fees for encroachment in the ROW. The annual permission for private improvement in the ROW (PIR) encroachment permit fee is \$8,475. The annual (PIR) fees are currently scheduled to increase by 1.5% effective July 1, 2009. However, the annual encroachment fee is currently under review by the City and may be subject to change.

As a final note, I will advise you that the City does not agree with the contentions stated in your letter regarding the effect of NextG's CC&N or that the reasonable fees the City charges for WCF or fiber optic cable installation are in any way preempted by state or federal law. I hope you find this information helpful. If you have further questions or need additional information, please feel free to contact my office. I can be reached at 480 312-4138 or via email at ksonoda@scottsdaleaz.gov

Sincerely,

Kevin Sonoda

Wireline Telecommunications Administrator

APPLICATION – NEXTG NETWORKS
CITY OF SCOTTSDALE – TELECOMMUNICATIONS LICENSE

LIST OF CONTENTS

- I. Cover Sheet and Contact Information
(COS Revised Code §47-164(b)(1): The names, addresses, and telephone numbers of the applicant, including those for responsible parties during the application, construction and implementation process. This includes a 24-hour emergency telephone contact)
- II. Certificate of Convenience & Necessity
(COS Revised Code §47-164(b)(2): A copy of the applicant's valid certificate of public convenience and necessity which has been issued by the Arizona Corporation Commission; except that this requirement shall not apply to a telecommunication corporation that provides solely interstate telecommunications within the state as demonstrated to the city's satisfaction)
- III. Statement of Other Telecommunications Licenses
(COS Revised Code §47-164(b)(3): A statement identifying by place and date any other telecommunications or cable licenses awarded to the applicant, its parent or subsidiary; and the status of said licenses)
- IV. Specific Route Maps for Infrastructure
(COS Revised Code §47-164(b)(4): Specific route maps for the applicant's infrastructure in Scottsdale including all areas proposed to be served for both 1) initial construction and 2) full project build-out. The initial construction map shall serve as Exhibit "A" as indicated in subsection 47-165(b)(1))
- V. Statement of Timetable for Installation of Facilities and Infrastructure
(COS Revised Code §47-164(b)(5): A proposed time schedule for the installation of all facilities necessary to become operational throughout the entire service area together with a document comparing the schedule with the city's proposed street maintenance schedule and the city's five-year capital improvement plan)
- VI. Copy of Existing Interconnect or Leasing Agreements in License Area
(COS Revised Code §47-164(b)(6): A copy or abstract of any agreement covering the license area, if existing, between the applicant and the local telephone company and/or other utilities providing for the use of the utility including but not limited to poles, lines or conduit)
- VII. Other Information
(COS Revised Code §47-164(b)(7): Any other details, statements, information or references, pertinent to the subject matter of such application which shall be required or requested by the city manager and/or city council, or by any other provision of law)
- VIII. Sworn Statement of Company

I. Cover Sheet and Contact Information

The names, addresses, and telephone numbers of the applicant, including those for responsible parties during the application, construction and implementation process. This includes a 24-hour emergency telephone contact.

Name of Applicant (Company): NextG Networks

Address of Applicant:

Date Application Submitted:

Name, Address, Title and Telephone Number of Persons Who Inquiries Should Be Made:

Telecommunications License Contact

Name:

Title:

Address:

Telephone:

Fax:

Construction Contact

Name:

Title:

Address:

Telephone:

Fax:

24-Hour Emergency Contact

Name:

Title:

Address:

Telephone:

Pager or Cell phone:

City of Scottsdale Telecommunications License Application

II. Certificate of Convenience & Necessity

Attach a copy of the valid certificate of public convenience and necessity which has been issued by the Arizona Corporation Commission; except that this requirement shall not apply to a telecommunication corporation that provides solely interstate telecommunications within the state as demonstrated to the city's satisfaction. Provide copy and label as Attachment "B."

III. Statement of Other Telecommunications Licenses

Provide a list identifying by place and date any other telecommunications or cable licenses awarded to the applicant, its parent or subsidiary; and the status of said licenses.

IV. Specific Route Maps for Infrastructure

Specific route maps for the applicant's infrastructure in Scottsdale including all areas proposed to be served for both 1) initial construction and 2) full project build-out. The initial construction map shall serve as Exhibit "A" as indicated in subsection 47-165(b)(1).

V. Statement of Timetable for Installation of Facilities and Infrastructure

A proposed time schedule for the installation of all facilities necessary to become operational throughout the entire service area together with a document comparing the schedule with the city's proposed street maintenance schedule and the city's five-year capital improvement plan.

VI. Copy of Existing Interconnect or Leasing Agreements in License Area

A copy or abstract of any agreement covering the license area, if existing, between the applicant and the local telephone company and/or other utilities providing for the use of the utility including but not limited to poles, lines or conduit.

VII. Other Information

Any other details, statements, information or references, pertinent to the subject matter of such application which shall be required or requested by the city manager and/or city council, or by any other provision of law.

VIII. Sworn Statement of Company

On behalf of NextG Networks, and in support of its application for a Telecommunications Licenses from the City of Scottsdale, the undersigned represents and swears:

- A. This application is submitted for consideration to receive a Telecommunications Licenses from the City of Scottsdale, Arizona. The undersigned representative of the Applicant has been duly authorized to make representations herein on behalf of the Applicant.
- B. Applicant recognizes that all representations are binding on it and that failure to adhere to any representations may, at the City's option, result in revocation of any license that may be granted in reliance upon this information.
- C. Consent is hereby given to the City to inquire into the legal, character, technical, financial, and other qualifications of the Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.
- D. NextG Networks will comply with all requirements and conditions of the Telecommunications License agreement and all lawful directives and reasonable requests for information by the City in connection with this application.
- E. NextG Networks will comply with all applicable federal, state, and local laws regarding nondiscrimination in the operation of its telecommunications network.

NEXTG NETWORKS

By: _____
(signature)

Name: _____

Title: _____

Subscribes and sworn before me on this _____ day of _____, 200__.

Notary Public

C

T-20377A-05-0484
OPEN MEETING ITEM

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UTIL15463



0000057863

1 BEFORE THE ARIZONA CORPORATI

2

3 IN THE MATTER OF THE APPLICATION) DOCKET NO.
4 OF NEXTG NETWORKS OF CALIFORNIA,) T-20377A-05-0484
5 INC. dba NEXTG NETWORKS WEST FOR A)
6 CERTIFICATE OF CONVENIENCE AND)
7 NECESSITY FOR TRANSPORT AND BACKHAUL)
8 SERVICES TO OTHER CARRIERS, INCLUDING)
9 BUT NOT LIMITED TO WIRELESS)
10 TELECOMMUNICATIONS SERVICES PROVIDERS)
11 AND POTENTIALLY TO WIRELESS)
12 INFORMATION SERVICES PROVIDERS.)
13

9

10

11 At: Phoenix, Arizona

12 Date: July 27, 2006

13 Filed: AUG 15 2006

14

15

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

17

18

19

Arizona Corporation Commission
DOCKETED
AUG 15 2006

20

21

22

23

24 Prepared for:

25 ACC

ARIZONA REPORTING SERVICES, INC.
Court Reporting
Suite Three
2627 North Third Street
Phoenix, Arizona 85004-1126

By: MICHELE E. BALMER, RPR
Certified Court Reporter
Certificate No. 50489

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2	WITNESS	PAGE
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6	ARMANDO FIMBRES	
7	Direct Examination by Mr. Layton	13
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11	INDEX TO EXHIBITS			
12	NO.	DESCRIPTION	Identified	Admitted
13	A-1	Application of NextG Networks	7	13
14	S-1	Staff Report	8	16

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, 1200 West Washington
4 Street, Phoenix, Arizona, commencing at 1:30 p.m. on the
5 27th day of July, 2006.

6
7 BEFORE: TEENA WOLFE, Administrative Law Judge

8 APPEARANCES:

9 For the Arizona Corporation Commission Staff:

10 KEITH LAYTON
11 Staff Attorney, Legal Division
12 1200 West Washington Street
Phoenix, Arizona 85007

13 For NextG Networks:

14 COLE, RAYWID & BRAVERMAN, L.L.P.
15 By: Mr. T. Scott Thompson
16 1919 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006

17 - and -

18 LEWIS AND ROCA, L.L.P.
19 By: Mr. Thomas H. Campbell
20 40 North Central Avenue
21 Phoenix, Arizona 85004

22 MICHELE E. BALMER
23 Certified Court Reporter
24 Certificate No. 50489

25

1 ALJ WOLFE: Let's go on the record.

2 Welcome to the Arizona Corporation Commission.

3 This is the time and place set for the hearing in the
4 matter of the application of NextG Networks of
5 California, Inc., doing business as NextG Networks West,
6 for a Certificate of Convenience and Necessity for
7 transport and backhaul services to other carriers,
8 including but not limited to wireless telecommunications
9 services providers and potentially to wireless
10 information services providers. The Docket No. is
11 T-20377A-05-0484.

12 My name is Teena Wolfe, and I'm the
13 Administrative Law Judge assigned to this proceeding.

14 Before we take appearances, I would like to
15 address an issue. Yesterday I received the motion and
16 consent of counsel for pro hac vice admission of
17 T. Scott Thompson filed in this docket by Michael T.
18 Hallam and Thomas H. Campbell, to which is attached a
19 copy of the notice of receipt of complete application
20 provided by the State Bar of Arizona, which copy in turn
21 includes as attachments copies of the nonresident
22 attorney pro hac vice application filed with the State
23 Bar of Arizona by Mr. Thompson, and a certificate of
24 good standing for Mr. Thompson provided by the District
25 of Columbia Court of Appeals.

1 I have reviewed the motion and its attachments,
2 and it is ordered today that in the discretion of the
3 Commission, T. Scott Thompson shall be permitted to
4 appear and participate in this matter pursuant to Rule
5 308(A) of the Arizona Supreme Court.

6 It is further ordered that Michael T. Hallam
7 and Thomas H. Campbell are designated as local counsel
8 in association with Mr. Thompson in this matter.

9 It is further ordered that the addresses for
10 services of papers and other communication for
11 Mr. Thompson and for local counsel shall be as they
12 appear in the motion and consent of counsel for pro hac
13 vice admission filed in this docket.

14 It is further ordered that Mr. Campbell,
15 Mr. Hallam, and Mr. Thompson must comply with Rule 38(A)
16 of the Rules of the Arizona Supreme Court with respect
17 to practice of law and admission pro hac vice.

18 It is further ordered that withdrawal of
19 representation must be made in compliance with
20 A.A.C R14-3-104(E) and Rule 1.16 of the Rules of
21 Professional Conduct under Rule 42 of the Arizona
22 Supreme Court.

23 And, finally, it is ordered that representation
24 before the Commission includes the obligation to appear
25 at all hearings and procedural conferences, as well as

1 all Open Meetings for which the matter is scheduled for
2 discussion, unless counsel has previously been granted
3 motion or permission to withdraw.

4 With that, I'll take appearances of counsel,
5 beginning with the Applicant.

6 MR. CAMPBELL: Thomas Campbell and Scott
7 Thompson on behalf of the Applicant, NextG Networks.

8 ALJ WOLFE: Okay. And for Staff?

9 MR. LAYTON: Good afternoon, Your Honor. Keith
10 Layton on behalf of Staff.

11 ALJ WOLFE: Thank you.

12 Are there any members of the public present who
13 would like to make public comment on the application?

14 (No response.)

15 ALJ WOLFE: Let the record reflect that there
16 are none.

17 Mr. Campbell, how many witnesses do you plan to
18 call?

19 MR. CAMPBELL: We'll have one witness, and
20 Mr. Thompson will be handling the witness.

21 ALJ WOLFE: Thank you.

22 And Mr. Layton?

23 MR. LAYTON: One witness, Your Honor.

24 ALJ WOLFE: Are there any other procedural
25 matters that we need to address before we begin?

1 MR. THOMPSON: No.

2 ALJ WOLFE: Mr. Thompson, if you would like to
3 call your witness.

4 MR. THOMPSON: Thank you, Your Honor. We call
5 Robert Delsman from NextG Networks.

6

7 ROBERT L. DELSMAN,

8 called as a witness on behalf of the Applicant, having
9 been first duly sworn by the Certified Court Reporter to
10 speak the whole truth and nothing but the truth, was
11 examined and testified as follows:

12

13 DIRECT EXAMINATION

14

15 Q. (BY MR. THOMPSON) Mr. Delsman, will you state
16 your full name and by whom you're employed.

17 A. Yes. Robert L. Delsman. I'm vice president
18 for government relations and regulatory affairs for
19 NextG Networks.

20 Q. Okay. I believe in front of you should be a
21 copy of the application filed by NextG in this matter,
22 maybe marked Applicant's Exhibit A-1.

23 Do you recognize that application?

24 A. Yes, I do.

25 Q. Okay. And was that prepared under your

1 supervision or at your direction?

2 A. Yes, it was.

3 Q. Okay. Are there any changes that need to be
4 made to that application today?

5 A. I note one change should be made. The name of
6 the treasurer listed as Tom Kais now should be Ray
7 Ostby, O-S-T-B-Y, who is the CFO of the corporation.

8 Q. Just for the record, that's located on -- that
9 would be on Attachment A; is that right? To the
10 application?

11 A. Yes. So substitute the name Ray Ostby for Tom
12 Kais as treasurer.

13 Q. And are there any other changes?

14 A. None.

15 Q. Okay. So with that change made, is the
16 application true and correct to the best of your
17 knowledge?

18 A. Yes.

19 Q. And also in front of you is a Staff Report that
20 I believe is premarked S-1. Have you reviewed the Staff
21 Report by the Corporation Commission Staff?

22 A. Yes, I have.

23 Q. And do you have any objections to the Staff
24 Report?

25 A. No. I do not.

1 MR. THOMPSON: Your Honor, we make Mr. Delsman
2 available for cross at this time.

3 ALJ WOLFE: Thank you.

4 Mr. Layton, do you have questions for this
5 witness?

6 MR. LAYTON: Just a couple, Your Honor. Thank
7 you.

8

9 CROSS-EXAMINATION

10

11 Q. (BY MR. LAYTON) Good afternoon, Mr. Delsman.

12 A. Good afternoon.

13 Q. Could you briefly describe the various services
14 that the company is requesting to provide?

15 A. The company is requesting to provide what
16 essentially, I believe, in Arizona is characterized as
17 private line service. It is what we call, as a sort of
18 trademark for marketing to our customers, RF Transport,
19 which is essentially a service -- a telecommunications
20 service provided as a carrier's carrier to other
21 telecommunications carriers. It could be RF Transport
22 or backhaul, or it might be service offered to an
23 information service provider.

24 But most of our business is provision of this
25 service to the limited universe of CMRS carriers, that

1 is, the wireless carriers.

2 Q. How many states does the company have authority
3 to provide similar services?

4 A. I believe that this would be the
5 twenty-seventh.

6 Q. And does the company currently operate in all
7 of these states?

8 A. We do not operate in all of the states. We
9 operate in three currently, but we are actively pursuing
10 networks and customer contracts in many of those other
11 states.

12 Q. And when do you expect to be providing services
13 in those other states?

14 A. It's a difficult question to answer. One to
15 three years. These are long lead-time regulatory
16 approvals that we need to obtain along with franchise
17 agreements in various municipalities. In order to be
18 able to offer this service and in order to sell our
19 services to our customers, they want to know that we
20 have the authority generally. So that's the reason why
21 that part of the cycle must occur prior to marketing our
22 services in those states.

23 Q. And if the Commission grants a CC&N to the
24 company, when would the company expect to begin
25 providing services in Arizona?

1 A. Within one year. We have several active leads
2 in Arizona.

3 Q. And could you briefly describe generally how
4 the company set its proposed tariff rates?

5 A. Our proposed tariff rates are -- because these
6 are custom-designed networks and the tariff must take
7 account of conditions that the company does not know at
8 the time that we propose the tariff rate, we have set
9 them at a level that we're comfortable we can maintain a
10 profit margin regardless of the most extreme
11 circumstances in which we may be asked to design,
12 construct, and operate a network.

13 However, the bulk of our business -- to date,
14 all of our business is done under ICB contracts
15 negotiated with the carriers.

16 Q. Okay. Under what circumstances would the
17 company charge a different rate for the same service to
18 different customers?

19 A. It's really based entirely on the
20 circumstances, the physical location, the cost and
21 availability of the components of a network such as
22 fiber, the geographical challenges that may be
23 associated with it, the cost of underlying entitlements
24 and permits, franchise agreements, various types of
25 payments.

1 But if all things were equal, because we do
2 deal with such a limited universe of customers, we would
3 expect that pricing even in a negotiated context to be
4 very close.

5 MR. LAYTON: Thank you, Mr. Delsman. I have no
6 further questions.

7

8

EXAMINATION

9

10 Q. (BY ALJ WOLFE) Good afternoon, Mr. Delsman.

11 A. Good afternoon, Judge.

12 Q. The Staff Report says that your proposed tariff
13 is based on actual rates that equal the maximum rates;
14 is that correct?

15 A. Yes.

16 Q. Is that a correct characterization?

17 A. I believe so, yes.

18 Q. So the monthly recurring charge of 15,000,
19 that's the maximum rate that you would charge?

20 A. That's the maximum, yes.

21 ALJ WOLFE: Those are all of the questions that
22 I have. Do you have any redirect?

23 MR. THOMPSON: No, Your Honor.

24 ALJ WOLFE: Thank you for your testimony today.
25 You're excused as a witness.

1 THE WITNESS: Thank you.

2 ALJ WOLFE: Mr. Layton, would you like to call
3 your witness?

4 MR. LAYTON: Yes, Your Honor. Staff calls
5 Mr. Fimbres to the stand.

6 MR. THOMPSON: Your Honor, before the Staff
7 calls its witness, if I may, I would like to move for
8 the introduction and admission of NextG's application,
9 which has been marked as Exhibit A-1.

10 ALJ WOLFE: Thank you. Is there any objection?

11 MR. LAYTON: No, Your Honor.

12 ALJ WOLFE: Exhibit A-1 is admitted.

13 (Exhibit A-1 was received into evidence.)

14 MR. THOMPSON: Thank you, Your Honor.

15

16 ARMANDO FIMBRES,
17 called as a witness on behalf of Staff, having been
18 first duly sworn by the Certified Court Reporter to
19 speak the whole truth and nothing but the truth, was
20 examined and testified as follows:

21

22 DIRECT EXAMINATION

23

24 Q. (BY MR. LAYTON) Good afternoon, Mr. Fimbres.

25 A. Good afternoon.

1 Q. Could you please state your name and business
2 address for the record.

3 A. Armando Fimbres. I work for the Arizona
4 Corporation Commission, Utilities Division, at 1200 West
5 Washington.

6 Q. And could you briefly describe your duties in
7 that position.

8 A. My duties are largely in telecommunications as
9 an analyst.

10 Q. And in the course of your employment, did you
11 review and evaluate a request for a CC&N from NextG
12 Networks of California, doing business as NextG Networks
13 West?

14 A. I did.

15 Q. And was the request for a CC&N made in this
16 docket?

17 A. Yes, it was.

18 Q. Do you have up there a Staff exhibit previously
19 marked as S-1?

20 A. Yes. I have it in front of me.

21 Q. Could you please identify this exhibit for the
22 record.

23 A. S-1 is the Staff Report filed -- docketed by
24 Staff on June 6.

25 Q. And was the Staff Report prepared by you or

1 under your direction?

2 A. Yes, it was.

3 Q. Do you adopt Staff Exhibit S-1 as part of your
4 sworn testimony here today?

5 A. I do.

6 Q. Based on your review and evaluation of the
7 application, is it your opinion that NextG is a fit and
8 proper entity to provide the proposed services?

9 A. Yes, I do. Yes.

10 Q. And, Mr. Fimbres, I would like to just clarify
11 one thing in your Staff Report. Could you turn to
12 Page 5 of the Staff Report.

13 A. Yes.

14 Q. The two paragraphs right above the section
15 numbered -- that recommendation, would you consider that
16 a condition for approval of the CC&N?

17 A. Yes. It is appropriate for compliance, yes.

18 Q. And do you have any other comments that you
19 would like to add at this time?

20 A. No. I do not.

21 MR. LAYTON: Your Honor, Staff moves for the
22 admission of Exhibit S-1.

23 ALJ WOLFE: Thank you.

24 Is there any objection?

25 MR. THOMPSON: No, Your Honor.

1 ALJ WOLFE: S-1 is admitted.

2 (Exhibit S-1 was received into evidence.)

3 MR. LAYTON: Mr. Fimbres is now available for
4 cross-examination.

5 ALJ WOLFE: Thank you.

6 Mr. Thompson, do you have questions for this
7 witness?

8 MR. THOMPSON: No, Your Honor.

9 ALJ WOLFE: Okay.

10

11

EXAMINATION

12

13 Q. (BY ALJ WOLFE) Good afternoon, Mr. Fimbres.

14 A. Good afternoon.

15 Q. I have to ask you at least one question.

16 A. All right.

17 Q. In the body of your Staff Report, you go over
18 the financial capability of the Applicant to provide the
19 requested services. I know you said in response to
20 Mr. Layton that you believe that the Applicant is a fit
21 and proper entity to receive a CC&N, but I just like to
22 ask.

23 Does the Applicant, in your opinion, have the
24 financial capability to provide the proposed services?

25 A. I need to kind of think about how to answer

1 that. In the context of the way Staff looks at these,
2 it's yes. Understanding that, first of all, the
3 customer set that's being served are customers that are
4 very much in a position to evaluate the service
5 provider. They're not providing services to a set of
6 customers such as consumers, residential consumers.

7 I think they say in their application that it's
8 a very unique set of customers, and I would have to
9 agree with that. So I think in the context of the way
10 we evaluated it, yes.

11 Q. And this Applicant is planning to provide
12 services over facilities that it will construct and own;
13 is that correct?

14 A. That's my understanding.

15 ALJ WOLFE: Thank you. Those are all of the
16 questions that I have.

17 Do you have anything further, Mr. Layton?

18 MR. LAYTON: No, Your Honor. Thank you.

19 ALJ WOLFE: Thank you for your testimony today.
20 You're excused as a witness.

21 Mr. Thompson, do you have anything further for
22 your case?

23 MR. THOMPSON: No, Your Honor. I think that
24 the application and the Staff Report speak for
25 themselves and support the Commission ultimately

1 granting the application.

2 ALJ WOLFE: Thank you.

3 Mr. Layton, anything further?

4 MR. LAYTON: No, Your Honor.

5 ALJ WOLFE: Do you want to make any sort of
6 closing statement?

7 MR. LAYTON: No.

8 ALJ WOLFE: Thank you.

9 Well, that will conclude the evidentiary
10 portion of this proceeding. And I'll take this matter
11 under advisement pending my submission of a recommended
12 opinion and order to the Commission for their final
13 disposition.

14 Thank you for your attendance today.

15 (The hearing concluded at 1:50 p.m.)

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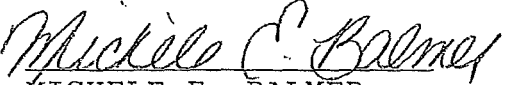
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1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4
5

6 I, MICHELE E. BALMER, Certified Court Reporter
7 No. 50489 for the State of Arizona, do hereby certify
8 that the foregoing printed pages constitute a full, true
9 and accurate transcript of the proceedings had in the
10 foregoing matter, all done to the best of my skill and
11 ability.
12

13 WITNESS my hand this 10th day of August, 2006.
14
15

16 
17 MICHELE E. BALMER
18 Certified Court Reporter
19 Certificate No. 50489
20
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23
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25

D

RECEIVED MAY 21 2010

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San Diego, CA 92129

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May 20, 2010

VIA EMAIL AND UPS DELIVERY

City of Glendale
Craig Tindall, City Attorney
5850 West Glendale Avenue, Suite 450
Glendale, AZ 85301

re: *City of Glendale's Postponement of City Council Hearing Date for the
Approval of NextG Networks of California, Inc. Right of Way Use
Agreement*

Dear Mr. Tindall:

NextG is sending this letter to express its concern about the City of Glendale's (the "City") continued delay in bringing the Right-Of-Way Use Agreement ("RUA") with NextG Networks of California, Inc. ("NextG") before the City Council for consideration. NextG began negotiations with the City more than a year ago and has had a fully negotiated RUA, signed by NextG on March 25, 2010 and ready for City Council action since that time. In addition, the permit applications for the underlying network were submitted to and have been in the City's possession since February, 2010. NextG accepted City staff's proposed City Council date of May 11, 2010, because of representations that that City Council date was real and that it would take place without further delay. Unfortunately, that assessment was incorrect and the RUA was bumped off the City Council Agenda. NextG is now being informed by City staff that the RUA will not be heard until some unspecified date in the future.

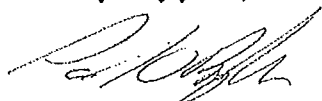
Although NextG respects the City's need to prioritize issues being brought before the City Council, such as the budget and negotiations with the NHL, NextG strongly believes that such prioritization should not delay business that is and has been ripe for City Council consideration. The RUA has undergone extensive review and scrutiny by City staff in several different City departments and should be put on the next available City Council date. Failure to do so will bring about severe economic damage to NextG and its contractual obligations with its client, since NextG detrimentally relied upon the assertions of City staff.

Additionally, NextG has set its network build out expectations to be consistent with the timeframes set forth in the Federal Communications Commission's *Declaratory Ruling*, FCC 09-09, WT Docket No. 08-165 (Nov. 18, 2009). As to the NextG's application for its network, the City must issue NextG a notice within thirty (30) days of any written deficiencies as submitted. No notice of deficiencies was received within the first thirty (30) days. While NextG had assumed that the City intended to adopt the RUA before issuing permits, this is not a requirement for NextG, and was negotiated principally to provide protections for the City. Thus, according to the timeframes established in the *Declaratory Ruling*, the Application that NextG made to the City has been deemed complete by operation of default. *Id.*, at §53. Having completed the first phase, NextG requests that the City issue permits consistent with the *Declaratory Ruling*, which finds that the decision should issue within 90 days of the initial Application for collocations on utility poles, and within 150 days of the initial Application for new poles. *Id.*, at §32.

City staff has been cordial to NextG; however, each delay further frustrates NextG's need to bring the RUA to a conclusion. Below is a chronology of events that has brought us to this point. NextG respectfully requests that the RUA be scheduled for June 8, 2010, City Council hearing so that both the City and NextG can attend to their respective needs.

Please contact me should you have any questions.

Very truly yours,



Paul R. O'Boyle
Counsel for NextG

cc: Patrick Ryan, Esq. (NextG)
Joe Milone, (NextG)

RUA Chronology

- On March 10, 2009, Joe Milone, NextG's Director of Government Relations, sent a letter to Ed Beasley, City Manager for the City. In the March letter, Mr. Milone described NextG's regulatory model and requested the opportunity to confer with the City about the possibility of entering into a Right of Way Use Agreement.
- On May 12, 2009, Mr. Milone met with Mark Gibson, Construction Engineering Manager, Paul Li, Assistant City Attorney and Dick Janke, Deputy Transportation Director for an initial meeting to discuss, generally, NextG's model and the benefits to both parties for entering into such agreement.
- On September 24, 2009, after several exchanges of draft agreements between NextG and the City, NextG submitted their license application fee.
- In February, 2010, NextG submitted plans to the City for review and approval.
- During negotiations, in March 2010, we made it very clear to Mr. Li that it was vital to have the agreement go to City Council as soon as possible in order to meet our contractual obligations to our client. Due to the City's budget issues, Mr. Li indicated that the earliest hearing date available would be May 11, 2010. This delay was due to budget deliberations. NextG was concerned, but accepted the May 11, 2010 City Council date based on representations from staff that the May 11th date was real and would happen by then without any issues.
- On March 22, 2010, negotiations between NextG and Mr. Li were concluded, and NextG signed the RUA on March 25, 2010. A final fully negotiated Right of Way Use Agreement was ready for City Council review and decision.
- Unfortunately on May 7, 2010, Mr. Li informed us that the NextG agreement was pulled from May 11, 2010, City Council agenda to a date not certain since you wanted to review the agreement.

E



NextG Networks

City of Glendale
Initial Staff Meeting

May 12th 2009

Joe Milone

Director of Government Relations

Empowering

Next Generation

Wireless Networks

About NextG Networks

❖ NextG is a fiber based, carrier-neutral service provider. Using our proprietary fiber-optic technology and fiber infrastructure, NextG provide wireless capacity and coverage solutions to the wireless carriers, including data and improved 911 services.

❖ NextG Networks' provides solid balance between citizen demand for wireless services and minimizing environmental and visual impacts of telecommunications installations.

❖ NextG strives to utilize existing utility infrastructure and has a pole attachment agreements in place with Arizona *→ can be shown, but not.* Public Service and Salt River Project. Further, NextG is also proposing using city-owned facilities (light poles) in lieu of installing new utility poles.



NextG's Regulatory Status

- ❖ NextG is NOT a Wireless Service Provider, we are a Fiber Transport service using an RF over Fiber technology.
- ❖ NextG operates under the rights granted under the Telecom Act, Sections 253 and 332.
- ❖ NextG Networks is a Public Utility (CLEC) granted by a CC&N (Docket T-20377A) from the Arizona Corporations Commission to provide regulated transport services to wireless telecommunication service providers.
- ❖ NextG expects equal access to public ROW through non-discriminatory treatment and processing in the city as other regulated public utilities. This includes provisions of the Arizona Revised Statutes § 9-582, specifically related to fees and the Transaction Privilege Tax provisions . 5.4% of Gross TPT

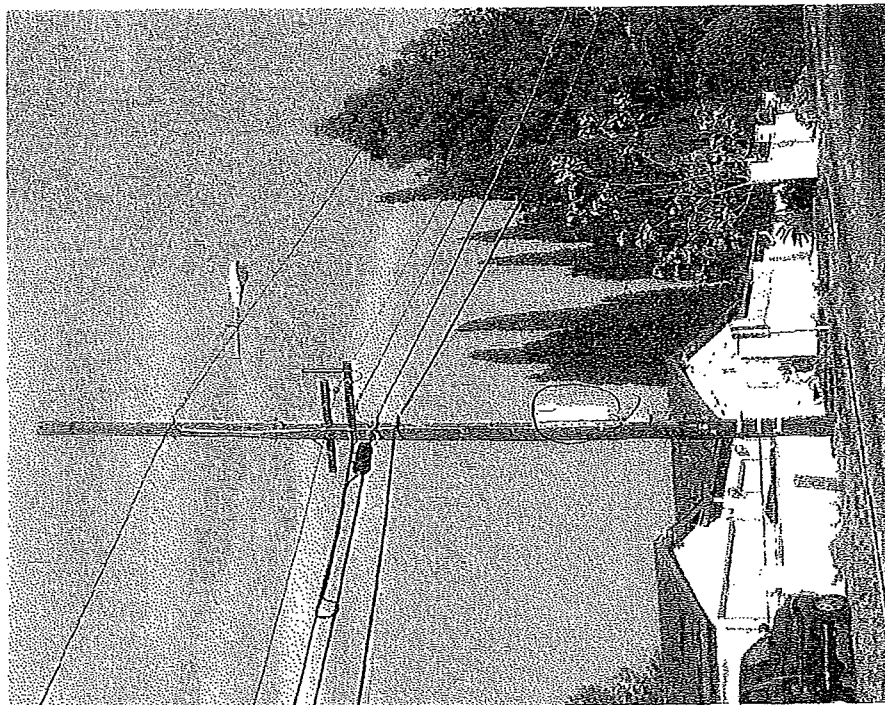
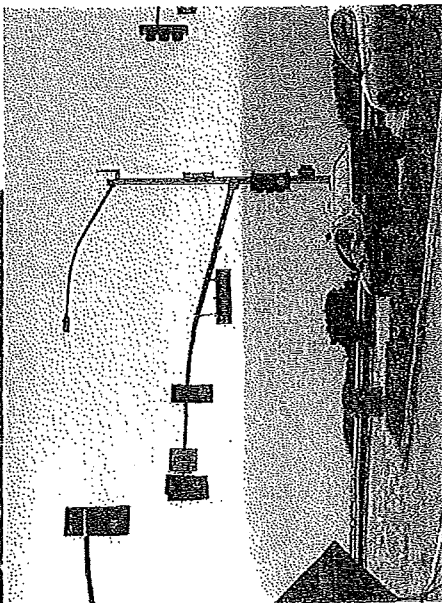
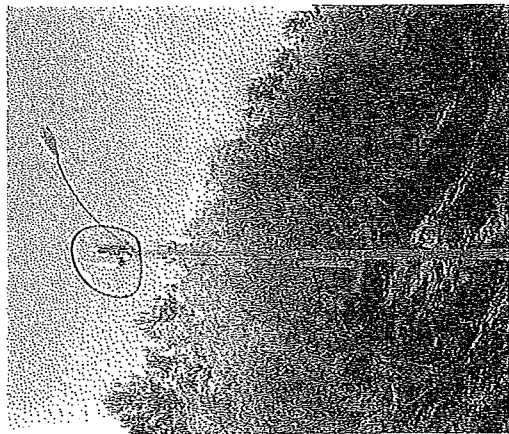


Network Facilities

- ❖ Fiber-optic cables to enable transport services from access point to customer location.
 - ❖ Aerial Fiber on existing above ground utility poles (Aerial)
 - ❖ Fiber placement in existing underground conduits and ducts (Lease Duct)
 - ❖ New fiber construction utilizing traditional trench and boring practices OR non-invasive micro-trench technology
- ❖ Electronic switching/conversion equipment.
 - ❖ Multiplexor to convert fiber optic signal to RF signal and vice-versa
 - ❖ Electric power fuse and disconnect switch
 - ❖ Wires – coax cable and Romex electrical wire
- ❖ Antenna
 - ❖ Single omni-whip or dual panel configuration which allows NextG to interface with our customers (convert RF to optical signal)



Node Pictures



S

NextG Networks

Company Confidential

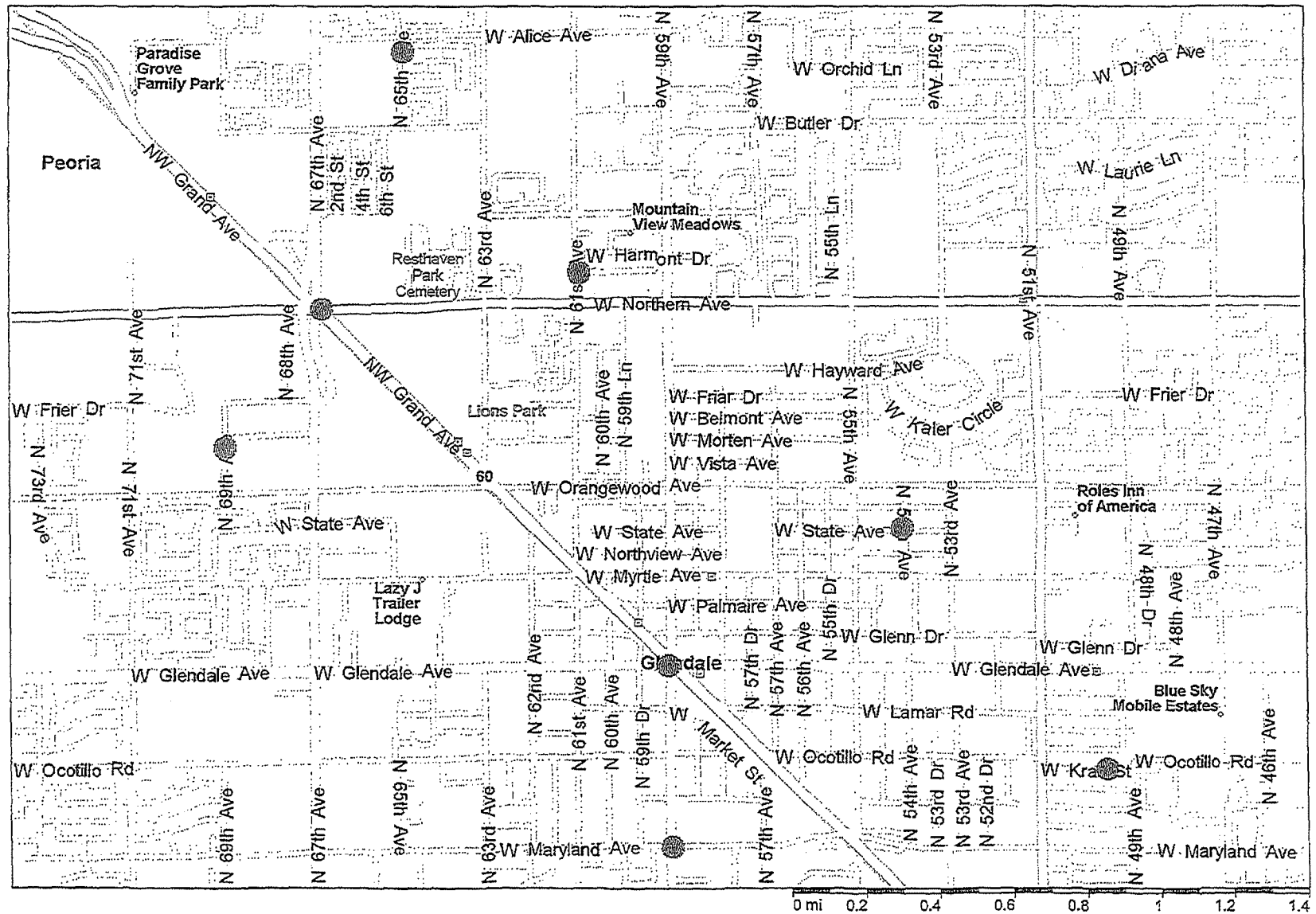
Page 5, May 11, 2009

Win-Win Solution

- ❖ The NextG Networks technology makes sense for any City and is a valuable infrastructure asset.
- ❖ Equipment is small and unobtrusive.
- ❖ Makes reliable wireless services (voice, data and E911) available in all areas of the City, especially in areas without solid coverage and traditional cell installations are not appropriate.
- ❖ Maximizes the use of existing above ground facilities vs. placing new utility poles in city.
- ❖ Opportunity for city to capture revenue for use of these public ROW and city-owned facilities.
- ❖ Network is carrier neutral and can accommodate multiple operators.

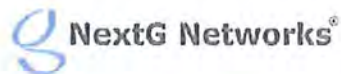


NextG - Glendale AZ Node Locations



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EXHIBIT “4”



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[NextG Networks Appoints Former American Tower Executive as New CEO](#)

Metro Area Case Study

[Philadelphia's 400-plus node network](#)

University Case Study

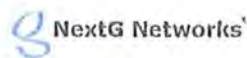
[Univ Notre Dame Improved wireless performance](#)

NextG Networks enhances the performance of existing mobile wireless infrastructure while meeting communities' desire for aesthetic installations.

NextG is a facilities-based carrier's carrier that designs, permits, builds, owns, operates and manages Distributed Antenna System (DAS) networks that enhance wireless performance. NextG Networks® DAS networks balance the aesthetics requirements of communities and consumers with the network performance needs of wireless carriers. Performance improvements include increased voice quality, greater handling of call traffic, fewer dropped calls, better mobile coverage, faster file transfers, and enhanced video quality.

NextG's innovative fiber-optic architecture, low-impact, low-emission equipment, and municipal rights-of-way agreements are the foundation of each NextG DAS Network. Because the networks are protocol and frequency neutral, they can carry cellular, PCS, 3G or any combination of wireless frequencies, standards and technologies. The networks serve residential, urban, and difficult-to-zone areas across the United States for numerous carriers of all sizes.

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Wireless
Service
Providers



Communities



Universities



NextG Networks designs, permits, builds, operates and manages fiber optic distributed antenna systems throughout the United States. These DAS systems rely on NextG's fundamental patents in distributed antenna systems, base station hosting, Coarse Wavelength Division Multiplexing (CWDM) for RF-over-fiber transport, and automatic bandwidth switching and provisioning. The company's patented technology, which enables efficient frequency reuse of the customer's bandwidth, combined with NextG's unique 3USE™ measurement and design services, enable the

company's DAS systems to improve coverage, capacity and performance for all wireless networks. NextG's technology enables the company to efficiently transmit RF signals over fiber along fiber routes and attach multiple DAS sites several miles along the ring. These DAS sites are typically located inconspicuously on lamp posts, utility poles, buildings, street lights and a host of other public and private locations.



The NextG network (in blue) fills in the gaps left by the cellular towers (in green)

3USE™

NextG's novel 3USE consulting and design service allows its customers to reuse frequency to get maximum return from their valuable wireless spectrum. These frequency reuse, measurement, and design techniques improve coverage, capacity and performance in wireless networks. By taking advantage of NextG Networks' services and experience, carriers get faster time-to-market, redundancy, reliability, lower cost, tailored coverage, and simplified maintenance as compared to traditional tower and rooftop sites.

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Every wireless carrier has identified areas around the country where it wants to increase coverage, capacity, and performance. This is why every major carrier in the United States has worked with NextG to quickly and effectively address its network needs. In cases where NextG is already operating in the underserved area, the wireless carrier can be online in a short time.

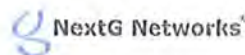
In areas where NextG does not yet operate, the company can rapidly create wireless systems that would typically take carriers years to cover using traditional towers and individually negotiated rooftop antenna installations. These carriers come to NextG for the most advanced, flexible metro area wireless systems available.

Network Flexibility

- Fiber optic systems can be ring or line configuration, aerial or underground
- Protocol-neutral systems support most any wireless service whether narrowband or broadband spectrum
- Patented technology allows smooth scalability—to add capacity or cells as needed
- Carriers can use a variety of remote equipment depending on coverage requirements
- Management operations can be performed by NextG NOC and/or carrier NOC
- Power backup, failover, and redundancy systems are also options



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Case Study: Major Metro Area

San Diego, California

San Diego is a beautiful Southern California coastal city known for its miles of perfectly groomed beaches, major entertainment attractions, sensational climate and breathtaking landscape. It's no wonder that the city is known worldwide as a premier tourist destination. But it's not just fun and games for this city of 1.25 million residents. San Diego also is becoming known as a key location for businesses working within telecommunications, biotechnology, software, electronics, and other cutting-edge industries. In addition, downtown San Diego has undertaken an urban redevelopment program that has transformed the once largely abandoned area into a beautiful display of ocean-side skyscrapers, modern live/work loft developments, upscale hotels, and many shops, cafes, and restaurants.

Also available in PDF



Facts

- The San Diego area covers more than 4,500 sq. miles
- The seventh largest city in the country and the second largest in California
- Known as Telecom Valley, San Diego has become the nation's hub for the wireless industry
- The city features 30 unique neighborhood business districts

Challenges

The current wireless infrastructure has been pushed beyond its performance limits. The current wireless infrastructure had been pushed beyond its performance limits. Carriers desperately needed to expand their wireless coverage in the area, increase the quality of calls made over their networks, and offer more wireless services to their customers. Due to the extremely varied topology of the city and the surrounding area—coastlines, snow-capped mountains, forests, deserts, valleys—and the comfortable, small town atmosphere the community wanted to maintain, traditional wireless infrastructure just couldn't provide adequate solutions for carriers.

- Large and growing population with seasonal fluctuations
- Increased demand for improved wireless service
- Growing tech business sector that relied on high quality wireless coverage
- Variety of topologies that created wireless coverage challenges
- Community's desire to maintain "small town" atmosphere



NextG Solution

NextG's San Diego deployment is one of the largest multi-operator, outdoor commercial DAS system in the United States.



Municipalities are increasingly leveraging DAS systems for added value and enhanced performance. These performance improvements include increased voice quality, greater call traffic handling, better mobile coverage, faster file transfers, and enhanced video-quality services. NextG precisely distributed its small DAS sites in locations that perfectly addressed the RF challenges presented by San Diego's diverse topology. DAS sites typically are placed on existing utility poles, street signs, and other discrete locations in the public right-of-way. NextG provided a multi-operator solution that met the community's aesthetic requirements.

Benefits

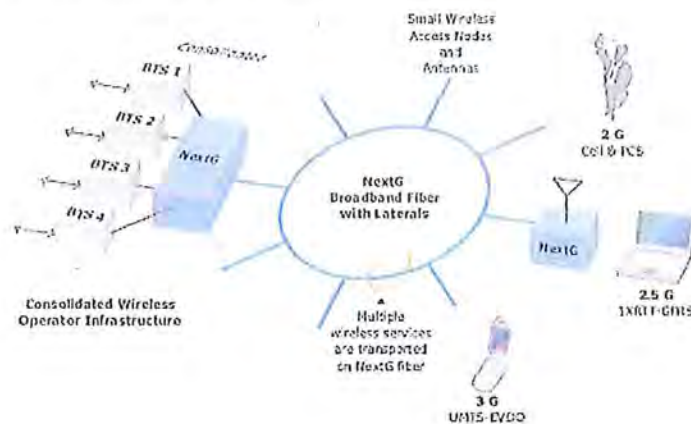
- Enhances wireless voice and data coverage, capacity, and quality
- Supports current and future wireless voice and data services from carriers
- Serves multiple operators on a single system

- Serves multiple operators on a single system
- Minimizes future construction by using advanced fiber optic technology
- Increases capability to add new services and operators
- Utilizes low power, low profile, unobtrusive equipment that blends with the landscape

Specifications

- Frequency: cellular and PCS
- Number of DAS sites: more than 500
- Miles of fiber: more than 400

NextG Networks Architecture



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EXHIBIT “5”

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ROBERT L. DELSMAN (Bar No. 142376)
NEXTG NETWORKS, INC.
2216 O'Toole Avenue
San José, CA 95131

Attorneys for Plaintiff,
NEXTG NETWORKS OF CALIFORNIA, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NEXTG NETWORKS OF CALIFORNIA, INC.

Plaintiff,

vs.

THE CITY OF CARLSBAD,
CALIFORNIA, THE CITY COUNCIL OF
THE CITY OF CARLSBAD, CLAUDE A.
LEWIS, ANN J. KULCHIN, MATT
HALL, MARK PACKARD, NORINE
SIGAFOOSE EACH IN HIS OR HER
OFFICIAL CAPACITY AS A MEMBER
OF THE CITY COUNCIL,

Defendants.

Case No. 06 CV 0650 (JAH)(POR)

DECLARATION OF JOSEPH MILONE IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION

Date: May 11, 2006

Time: 3:00 p.m.

Courtroom: 11

Judge: Hon. John A. Houston

BY FAX

Case No. 06 CV 0650 (JAH)(POR)

DECLARATION OF JOSEPH MILONE IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

COLE, RAYWID & BRAVERMAN, LLP
2381 ROSENTHAL AVE., Suite 110
EL SEQUOIO, CA 90245

1 I, Joseph Milone, declare and state as follows:

2 1. I am the Director of Government Relations for NextG Networks of California, Inc.
3 ("NextG"). I make this Declaration in support of NextG's Motion for Preliminary Injunction in
4 the above captioned action. Unless otherwise indicated, I know the following of my own
5 personal knowledge, and if called as a witness in this action, I could and would testify
6 competently to these facts under oath.

7 2. The Director of Government Relations is in the Network Real Estate Department.
8 Reporting directly to the Senior VP or Regulatory, the position is responsible for representing
9 NextG Networks in all dealings with public agencies. The primary function of the position is to
10 secure any necessary and appropriate form of authorization from cities to enable NextG to install
11 infrastructure in the public rights-of-way and conduct business as a telecommunications
12 company. The Director of Government Relations is also responsible for the ongoing relationship
13 with the jurisdictions after the network is deployed.

14 3. NextG is a "carriers' carrier." It constructs and provides telecommunications services
15 over independent transport networks ("Telecommunications Networks") that augment
16 geographic coverage and improve system capacity for other carriers' wireless networks by
17 transporting signals via fiber optic lines from and among small antennas and a base station.
18 NextG's facilities convert a carrier's radiofrequency ("RF") signal to an optical signal for
19 transmission across fiber optic cables. As the signal nears the location of the receiving party,
20 NextG's Telecommunications Network converts the optical signal back to an RF signal and
21 transmits it out to the receiving party.

22 4. NextG's Telecommunications Networks are made up of a "hub" and a system of fiber
23 optic cables, remote optical repeaters or "nodes" and small antennas attached to poles. A
24 carrier's RF signal is received at the NextG hub (typically located on private property) and
25 directed to NextG's conversion equipment located at the hub. NextG's conversion equipment
26 converts the carrier's RF signal to an optical signal and transmits the signal across fiber optic
27 cables strung on existing utility poles or installed in existing underground conduit, typically in
28

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1 public rights-of-way. As the signal nears the location of the carrier's subscriber, NextG's remote
2 conversion equipment or "node" (interconnected with the fiber optic cable and affixed to the
3 utility pole) converts the optical signal back to an RF signal and transmits it out to the
4 subscriber's handset or similar device via a small antenna (in Carlsbad, NextG intends to install
5 "omni" antennas that are only 1 inch in diameter and 24 inches tall). The process works in
6 reverse with respect to RF signals received at the NextG remote node.

7 5. In order to construct, operate, and maintain its facilities, and therefore to provide
8 telecommunications services, NextG requires access to public rights-of-way, including but not
9 limited to utility or street light poles located in the public rights-of-way. In the City of Carlsbad,
10 the City Council has adopted requirements that prohibit the installation of any private utility
11 poles in the public rights-of-way in the vast majority of the City. As a result, in the vast majority
12 of the City, the only poles available for NextG to use are City street light poles.

13 6. Although I am not intimately familiar with all of its terms, I am aware that NextG has
14 a contract with a customer to supply the customer telecommunications services within the City
15 of Carlsbad, and I have reviewed certain portions of the contract. To perform its obligations
16 under this contract, NextG needs to install its telecommunications facilities in the City of
17 Carlsbad's public rights-of-way. Specifically, NextG will need to install approximately 45 miles
18 of fiber optic lines and to install approximately 57 Nodes, including to street light poles. NextG
19 would install its telecommunications Node equipment above street level which will not interfere
20 with pedestrian or vehicular traffic.

21 7. The telecommunications facilities that NextG will deploy at each node in Carlsbad, at
22 least initially, will consist of an "omni" antenna that is approximately 1 inch in diameter and 24
23 inches tall, and an equipment box that is approximately 24 inches tall, 6 inches wide, and 6
24 inches deep.

25 8. It is my understanding that the City's ordinances require that public utility facilities to
26 be "undergrounded" in the vast majority of the City. Consequently, for the vast majority of the
27 City, the only way for NextG to access the public rights-of-way for its telecommunications
28

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1 facilities is to use City street light poles. The City has not disputed this fact.

2 9. On November 16, 2004, I, on behalf of NextG, sent a letter to the City of Carlsbad,
3 seeking permission to install telecommunications network and telephone lines in the public
4 rights-of-way in the City of Carlsbad. Attached hereto as Exhibit "1" is a true and correct copy
5 of NextG's November 16, 2004, application letter.

6 10. Since November 16, 2004, NextG has engaged in regular, extensive, and ongoing
7 communications with the City in an attempt to obtain approval for NextG's installation of its
8 Network. During NextG's interaction with the City of Carlsbad, the City has changed its
9 position regarding the process for NextG's access to public rights-of-way and the terms and
10 conditions for accessing the City's street light poles. For example, the city initially
11 communicated to NextG that it would require a payment of \$1,000 per month (*i.e.*, \$12,000 per
12 year), per pole for the use of City poles. Over the course of discussions, the lowest annual fee
13 discussed by the City was \$1,000 per year per street light plus 5% of NextG's annual gross
14 revenues. As of March 1, 2006, while the City indicated it would yet further consider the matter,
15 the City communicated to NextG that the City intended to charge NextG \$1,000 per month per
16 street light pole.

17 11. At all times, the city clearly communicated to NextG that the annual price the City
18 will require for NextG to install facilities on City street light poles would be not limited to the
19 City's cost of administering NextG's use of the public rights-of-way or street light poles.

20 12. To put the City's demand in perspective, it is my understanding that the annual rental
21 rate NextG must pay to private utilities (which is subject to regulation) is generally
22 approximately \$40 to \$50 per year per pole, and NextG could purchase and install its own pole
23 for approximately \$4,000.

24 13. The fees for use of City poles are not published by the City. In addition, the pole fees
25 demanded by the City are nearly double the revenue that the poles sites will generate under
26 NextG's customer service contract.

27 14. NextG directly owns, controls, operates and manages its own instruments and
28

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EL SEQUOYO, CA 90245

1 appliances used to facilitate communications by telephone for compensation within California
2 and has consistently explained to the City that NextG is therefore a telephone corporation under
3 California state law. NextG may also operate and manage instruments and appliances owned
4 and controlled by its wireless carrier customers that are used to facilitate communications by
5 telephone for compensation within California. NextG has also informed the City that it holds a
6 Certificate of Public Convenience and Necessity ("CPCN") from the California Public Utilities
7 Commission ("CPUC") and is a "telephone corporation" under California law. NextG has
8 further explained to the City that the CPUC has recently affirmed the scope and grant of NextG's
9 CPCN to include antennas. We have repeatedly communicated to the City that NextG believes it
10 is therefore entitled to the rights set forth in Section 7901 of the California Public Utilities Code.

11 15. The City has informed me that NextG must comply with the City's zoning scheme, as
12 recently amended by Ordinance No. NS-791 ("Wireless Zoning Ordinance"). This ordinance
13 was passed and adopted on February 21, 2006.

14 16. Throughout its discussions with NextG, the City has not raised any objection as to the
15 size, duration, or scope of NextG's installation of telecommunications facilities. The City has
16 moreover never taken the position that NextG's installation would obstruct travel on the rights-
17 of-way in any manner.

18 17. Based on my review of the agreement, it is my understanding that NextG must
19 complete its construction of its Telecommunications Network in the City by no later than
20 November 21, 2006. The City's actions and requirements threaten NextG's ability to fulfill its
21 contractual obligations to provide telecommunications services in the City.

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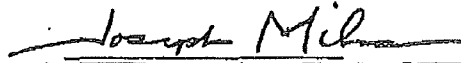
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Cote, Raywid & Braverman, LLP
2381 Rosecrans Ave., Suite 110
El Segundo, CA 90245

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I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this Declaration was executed by me on March 27, 2006 in Houston, Texas.



Joseph Milone

COLE, RAYWID & BRAVERMAN, LLP
2381 ROSECRANS AVE., SUITE 110
EL SEQUOIA, CA 90245

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Exhibit</u>	<u>Page</u>
1	NextG's November 16, 2004 Application Letter	6

Case No. 06 CV 0650 (JAH)(POR)

DECLARATION OF JOSEPH MILONE IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION



NextG Networks 8000 Research Forest Drive • Suite 115-110 • The Woodlands • TX • 77382

November 16, 2004

Via U.S. Postal Service

CITY OF CARLSBAD

Attn: Mr. Raymond Patchett, City Manager
1200 Carlsbad Village Drive
Carlsbad, CA 92008

re: *Proposed Right-of-Way Use Agreement between the City of Carlsbad,
California, and NextG Networks*

Dear Mr. Patchett

Please accept this letter as the formal application of NEXTG NETWORKS OF CALIFORNIA INC., a Delaware corporation *dba* NextG Networks West ("NextG"), for a right-of-way use agreement or other appropriate form of authorization from the CITY OF CARLSBAD (the "City") to conduct business as a telecommunications company operating with infrastructure located in the City's public ways. This application is submitted to the City in accordance with § 253 of the federal Telecommunications Act of 1996 and applicable State laws and local ordinances governing the use of the public way by telecommunications carriers for the provision of their services. We have enclosed a short FAQ sheet entitled "A Local Official's Guide: Responding to a Telecommunications Application from NextG Networks" in order to assist you in analyzing and responding to this application.

A. Agreement Form and Purpose.

NextG hereby requests a non-exclusive right-of-way use agreement or other appropriate form of authorization from the City of Carlsbad in order to install, operate, and maintain fiber optic cable and associated equipment, including optical repeaters and antenna facilities, on, over, and under the public

Exhibit 1

Page 10 of 9

Carlsbad Municipal Franchise Application Letter 111504
Page 2

way in the City in connection with the provision of telecommunications provided by NextG as a carrier's carrier to its wireless carrier customers. In order to expedite its application and processing, NextG proposes to enter into a right-of-way use agreement with the City substantially in the form of the right-of-way use agreement attached hereto.

B. Information about NextG.

Information about NextG and its technology and services is contained in a separate document entitled "NextG Benefits to Cities" enclosed with this application letter. Additional information can be supplied to the City upon request.

C. NextG Business Model.

NextG is a facilities-based provider of protocol-agnostic, fiber-aggregated optical-to-radio frequency ("RF") conversion and RF transport telecommunications services. NextG will make its services available in the City of Carlsbad to any wireless carrier that wishes to purchase them to transport its customers' wireless voice and data transmission between the carrier's BTS and the fiber-fed optical repeater nodes and associated antennae that NextG seeks to deploy on streetlights and other infrastructure available under the right-of-way use agreement or from other utilities. NextG's services will amplify capacity and extend wireless carriers' RF signals in difficult coverage areas, including the 'urban canyons' of Carlsbad. NextG customers will offer regulated telecommunications services to its customers under turnkey agreements through which NextG will construct and operate fiber-fed microcell networks capable of sustaining up to four (4) carrier customers without unnecessary replication of infrastructure.

D. Regulatory Status.

NextG has been granted certificate of public convenience and necessity ("CPCN") #U-6745-C from the Public Utilities Commission of the State of California in order to offer its services to its CMRS customers in the State.

Exhibit 1

Page 7 of 9

Carlsbad Municipal Franchise Application Letter 111504
Page 3

E. Proposed Location and Number of Attachments.

NextG proposes that its right-of-way use agreement authorize the installation and operation of its equipment and network in, under, and over the public ways of the City on standard-design prefabricated steel poles, wooden distribution poles, and other available structures throughout the City. The date of NextG's initial deployment and the number of installations planned for deployment in the City will be determined after the right-of-way use agreement is in place and NextG can begin marketing its services in the City.

F. Use of Poles and Streets; Trenching.

NextG requests the right to utilize City-owned streetlight poles, traffic light poles, and/or highway sign supports (collectively "poles") for the deployment of optical repeater telecommunications equipment (including associated cables, brackets, and antennae) in accordance with the terms, conditions, and authorized purposes set forth in the right-of-way use agreement. To the greatest extent possible, NextG will utilize the existing conduit available for the distribution of fiber optic cable in the City. NextG will use every effort to minimize trenching and boring in the streets of the City by feeding fiber optic cabling directly from existing conduit, where available, to the poles to which optical repeater nodes and related equipment will be attached pursuant to the right-of-way use agreement. NextG will observe all applicable rules and regulations of the City and its various departments with respect to permitting and the terms and conditions related to construction of the NextG fiber-fed optical repeater network in the City.

G. Technical Specifications and Drawings.

NextG will agree to observe all the terms, conditions, limitations, and design specifications set forth in the right-of-way use agreement in its installation, deployment, and operation of the NextG fiber-fed optical repeater network in the City. Additional specifications and technical drawings of representative types of equipment can be supplied upon requested by the City.

Exhibit 1

Page 8 of 9

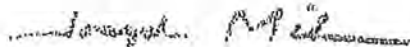
Carlsbad Municipal Franchise Application Letter 111504
Page 4

H. Proposed Compensation to City.

NextG proposes a compensation structure under its right-of-way use agreement of five percent (5%) of NextG's gross revenues from services provided in the City plus Five Hundred Dollars (\$500.00) per City-owned pole utilized per annum. In addition, NextG desires to negotiate terms for the use of any City-owned fiber and/or conduit space that may be available.

Thank you for your prompt and courteous attention to this matter. If you have any questions, please do not hesitate to call me at 936-273-0849. I look forward to setting up a meeting at your convenience to discuss the City's response to this letter of application and the next steps required to move NextG's application forward to approval.

Very truly yours,
NEXTG NETWORKS, INC.



Joseph Milone, Regional Director
Government Relations and Real Estate

enclosures:--Local Official's FAQ Sheet
--Proposed form of right-of-way use agreement
--NextG Benefits to Cities

cc: Ronald R. Ball, Esq., City Attorney
Robert L. Delsman, Esq., NextG Networks
Patrick S. Ryan, Esq., NextG Networks

Exhibit 1

Page 9 of 9

EXHIBIT “6”



NextG Networks, Inc. 2033 Gateway Place, Suite 500, San Jose, CA 95110-3709 Telephone 408.951.8679 fax 408.573.6851

NextG Networks

EMPOWERING NEXT GENERATION
WIRELESS NETWORKS

December 23, 2002

Via U.S. Postal Service

CITY OF SAN FRANCISCO
Department of Telecommunications and Information Services
Attn: Lewis W. Loeven III, Executive Director/Chief Information Officer
375 Stevenson Street, 5th Floor
San Francisco, CA 94103

re: *Proposed Neutral-Host Microcellular Telecommunications Permit Agreement
between the City of San Francisco, California, and NextG Networks, Inc.*

Dear Mr. Loeven:

Please accept this letter as the formal application of NEXTG NETWORKS OF CALIFORNIA, INC., a Delaware corporation ("NextG"), for a mobile telecommunications permit or other appropriate form of authorization from the CITY OF SAN FRANCISCO (the "City") to conduct business as a telecommunications company operating with infrastructure located in the City's public ways.

A. Permit Form and Purpose.

NextG hereby requests a non-exclusive mobile telecommunications permit or other appropriate form of authorization from the City of San Francisco in order to install, operate, and maintain fiber optic cable and associated equipment, including microcell and antenna facilities, on, over, and under the public way in the City in connection with the provision of mobile telecommunications and high-capacity telecommunications services relating to mobile telecommunications.

B. NextG Financial and Ownership Information.

Financial and ownership information about NextG is contained in a separate document entitled "NextG Networks, Inc. Company Information Sheet" enclosed with this Permit application. Additional financial information can be supplied to the City upon request.

C. NextG Business Model.

NextG is a facilities-based provider of protocol-agnostic, fiber-aggregated optical-to-radio frequency ("RF") conversion and microcellular repeater services.

*Lewis W. Loewen III, Executive Director/Chief Information Officer
December 23, 2002—page 2*

NextG will make its services available in the City of San Francisco to any wireless carrier that wishes to purchase them to transport its customers' wireless voice and data transmissions between the carrier's BTS and the fiber-fed microcell nodes and associated antennae that NextG seeks to deploy on streetlights and other municipal infrastructure available under the Permit and any additional required authorizations. NextG's services will amplify and extend wireless carriers' RF signals in difficult coverage areas, including the 'urban canyons' of San Francisco. NextG customers will enter into turnkey network services agreements through which NextG will construct and operate fiber-fed microcell networks capable of sustaining up to four (4) carrier customers without unnecessary replication of infrastructure.

D. Regulatory Status.

NextG has applied for a certificate of public convenience and necessity ("CPCN") from the PUC of the State of California in order to offer its services to its CMRS customers in the State of California. NextG will be on the agenda to obtain a CPCN from the PUC during January, 2003. NextG will operate as a telecommunications carrier for the purposes of the Telecommunications Act of 1996.

E. Proposed Location and Number of Attachments.

NextG proposes that its mobile telecommunications permit authorize the installation and operation of its equipment and network in, under, and over the public ways of the City on up to five hundred (500) standard-design prefabricated steel poles, wooden distribution poles, and other available structures throughout the City. NextG will apply for specific site and installation permits and approvals in connection with the buildout of customer orders to attach microcells and antennae to its neutral-host fiber network.

F. Use of Poles and Streets; Trenching.

NextG requests the right to utilize City-owned streetlight poles, traffic light poles, and/or highway sign supports (collectively "poles") for the deployment of microcellular telecommunications equipment (including associated cables, brackets, and antennae) in accordance with the terms, conditions, and authorized purposes for the use and installation of such equipment specified in an appropriate permit agreement or agreements. To the greatest extent possible, NextG will utilize the existing conduit available for the distribution of fiber optic cable in the City. NextG will use every effort to minimize trenching and boring in the streets of the City by feeding fiber optic cabling directly from existing conduit, where available, to the poles to which microcellular nodes and related equipment will be attached pursuant to the mobile telecommunications permit. NextG will observe all applicable rules and regulations of

*Lewis W. Loewen III, Executive Director/Chief Information Officer
December 23, 2002--page 3*

the City and its various departments with respect to permitting and the terms and conditions related to construction of the NextG fiber-fed microcellular network in the City.

G. Technical Specifications and Drawings.

NextG will agree to observe all the terms, conditions, limitations, and design specifications set forth in the applicable permits and agreements with the City in its installation, deployment, and operation of the NextG fiber-fed microcellular network in the City. Additional specifications and technical drawings of representative types of equipment can be supplied upon requested by the City.

Thank you for your prompt and courteous attention to this matter. If you have any questions, please do not hesitate to call me at (510) 845-9681 or (408) 573-5979. I look forward to discussing with you the next steps required to move NextG's permit application forward.

Very truly yours,



Robert L. Delsman, Senior Director, Governmental Relations &
Regulatory Affairs

enclosures

cc: Dennis M. Brady, Deputy Director
Kirk Wampler
Ronald E. Kramer, Esq.

EXHIBIT “7”



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 29 2006

JEFF HATCH-MILLER Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
NEXTG NETWORKS OF CALIFORNIA, INC.
DBA NEXTG NETWORKS WEST FOR
APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY FOR
TRANSPORT AND BACKHAUL SERVICES TO
OTHER CARRIERS, INCLUDING BUT NOT
LIMITED TO WIRELESS
TELECOMMUNICATIONS SERVICES
PROVIDERS AND POTENTIALLY TO
WIRELESS INFORMATION SERVICES
PROVIDERS.

DOCKET NO. T-20377A-05-0484

DECISION NO. 68915

OPINION AND ORDER

DATE OF HEARING: July 27, 2006

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Teena Wolfe

APPEARANCES: Thomas H. Campbell, LEWIS AND ROCA, LLP, on
behalf of NextG Networks of California, Inc. dba NextG
Networks West;

T. Scott Thompson, COLE, RAYWID & BRAVERMAN,
LLP, on behalf of NextG Networks of California, Inc. dba
NextG Networks West; and

Keith Layton, Staff Attorney, Legal Division, on behalf of the
Commission's Utilities Division Staff.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On July 1, 2005, NextG Networks of California, Inc. dba NextG Networks West
("NextG" or "Applicant") filed with the Commission an application for a Certificate of Convenience

3:TWolf@Telecomprivatelaw030484.doc

DOCKET NO. T-20377A-05-0484

1 and Necessity ("Certificate") to provide private line and intrastate access services in order to supply
2 transport and backhaul services to other carriers, including but not limited to wireless
3 telecommunications services providers and potentially to wireless information services providers
4 within the State of Arizona.

5 2. On August 17, 2005, the Commission's Utilities Division Staff ("Staff") docketed a
6 copy of a letter informing Applicant of further information required for Staff to complete its analysis
7 of the application.
8

9 3. On October 17, 2005, Applicant docketed its responses to Staff's request for
10 additional information.

11 4. On June 6, 2006, Staff filed a Staff Report on the application, recommending approval
12 subject to certain conditions.

13 5. On June 16, 2006, a Procedural Order was issued setting the matter for hearing to take
14 place on July 27, 2006, and setting associated procedural deadlines.

15 6. On July 14, 2006, NextG filed an Affidavit of Publication demonstrating that notice of
16 the application was published in *The Arizona Republic*, a newspaper of general circulation in the
17 requested Certificate service area, on June 30, 2006. No requests for intervention were filed.
18

19 7. On July 26, 2006, Thomas H. Campbell and Michael T. Hallam filed a Motion and
20 Consent of Local Counsel for *Pro Hac Vice* Admission of Scott Thompson.

21 8. The hearing convened as scheduled on July 27, 2006. Admission *pro hac vice* was
22 granted to Scott Thompson at the commencement of the hearing. Applicant and Staff appeared
23 through counsel and presented evidence. No members of the public appeared to provide public
24 comment.
25

26 9. NextG is organized under the laws of Delaware as a C corporation, and has been
27 authorized to do business in Arizona since December 23, 2004.
28

DOCKET NO. T-20377A-05-048

1 10. NextG plans to offer private line and intrastate access services in order to provide
2 transport and backhaul services of voice and data signals, primarily for wireless providers. NextG's
3 "RF Transport Services" use optical technology, including multi-wavelength optical technology, over
4 dedicated transport facilities to provide telecommunications companies with more efficient transport
5 and greater overall network service options. RF Transport Services connect customer provided
6 wireless capacity equipment to customer-provided or NextG provided bi-directional RF-to-optical
7 conversion equipment at a hub facility. The hub facility can be customer or NextG provided. The
8 conversion equipment will allow NextG to accept RF traffic from the customer and then send bi
9 directional traffic transmission across the appropriate optical networks. At the remote end, NextG or
10 the telecommunications company will provide RF-to-optical conversion equipment to allow bi
11 directional conversion between optical signals and RF signals. RF signals can be received and
12 radiated at this remote node. NextG will offer service subject to the availability of the necessary
13 facilities and/or equipment. NextG currently has plans to operate in 27 states, and has commenced
14 operations in California, Georgia and Illinois. At the hearing, NextG's witness testified that NextG
15 plans to commence provision of service in Arizona within one year of receiving a Certificate.

16 11. NextG states in its application that it will rely on the financial resources of its parent
17 company, NextG Networks, Inc. The Staff Report states that the 2005 financial statements provided
18 by NextG list total assets of \$44,638,000, total equity of \$17,514,000, and net income of
19 (\$5,739,000).

20 12. The Staff Report states that NextG's parent and affiliates operate in 8 states and have
21 approximately 36 employees and 11 contract workers with more than 150 years of combined
22 experience in the wireless industry.

23 13. The application states that on March 9, 2005, the City and County of San Francisco
24 filed a complaint against NextG associated with a dispute between NextG and the City regarding
25

DOCKET NO. T-20377A-05-0484

1 NextG's ability to construct in the public rights-of-way. Staff states in its Staff Report that on
2 January 19, 2006, Staff received a copy of a January 12, 2006 Order of the California Public Utilities
3 Commission (CPUC Decision 06-01-006) finding on behalf of NextG. Staff noted that the complaint
4 did not involve issues related to customer service, but only jurisdictional issues raised by the City.
5 NextG certified that neither the Applicant nor any of its officers, directors, partners or managers have
6 been or are currently involved in any other formal or informal complaint proceedings pending before
7 any state or federal regulatory commission, administrative agency, or law enforcement agency, or in
8 any civil or criminal investigations, and that NextG's parent and affiliates have not had an application
9 for service denied, or authority revoked, in any state.
10

11 14. Applicant has the financial, technical, and managerial capabilities to provide the
12 private line services and intrastate access services it is requesting authority to provide.

13 15. Applicant will be providing service in areas where incumbent local exchange carriers
14 ("ILECs"), along with various competitive local exchange carriers ("CLECs") and interexchange
15 carriers ("IXCs") are providing telephone and private line services.
16

17 16. Staff recommended that Applicant's proposed services be classified as competitive
18 because there are alternatives to Applicant's services; Applicant will have to convince customers to
19 purchase its services; Applicant has no ability to adversely affect the local exchange or interexchange
20 service markets; and Applicant will therefore have no market power in those local exchange or
21 interexchange service markets where alternative providers of telecommunications services exist.
22

23 17. It is appropriate to classify all of Applicant's authorized services as competitive.

24 18. NextG's proposed tariff lists a maximum rate for its proposed private line services and
25 intrastate access services. Staff reviewed NextG's proposed tariff, and states that while it lists a
26 maximum rate, NextG's proposed tariff is based on actual rates, and notes that Commission rules
27 require that the rate charged for a service may not be less than a company's total service long-run
28

DOCKET NO. T-20377A-05-048

1 incremental cost of providing the service. Staff states that since the services to be offered are high
2 competitive and targeted for sophisticated carriers and communications companies experienced in
3 negotiating charges and other contract terms for point-to-point wireless voice and data services, Staff
4 believes the proposed rates are just and reasonable. Staff also notes that the majority of NextG
5 customers are expected to purchase services under individual case basis ("ICB") arrangements and
6 pricing. Staff stated that while it considered the fair value rate base ("FVRB") information submitted
7 by the Applicant, it did not believe the information deserved substantial weight in setting Applicant's
8 rates.
9

10 19. The rates proposed by the application are for competitive services, and in general
11 rates for competitive services are not set according to rate of return regulation. Staff obtained
12 information from the Applicant that indicates its FVRB is zero. Staff has reviewed the rates to be
13 charged by the Applicant and believes they are just and reasonable as they are comparable to those of
14 other competitive local carriers offering service in Arizona and comparable to the rates Applicant
15 charges in other jurisdictions. The rates to be ultimately charged by Applicant will be heavily
16 influenced by the market. Because of the nature of the competitive market and other factors, a FVRB
17 analysis is not necessarily representative of Applicant's operations.
18

19 20. Staff recommends that Applicant be granted a Certificate to provide the requested
20 intrastate telecommunications services subject to the condition that Applicant docket tariffs for each
21 certificated service conforming to the tariffs proposed in the application, within 365 days from the
22 date of an Order in this matter or 30 days prior to providing service, whichever comes first, and that
23 the Certificate should become null and void after due process if it does not timely comply with the
24 condition.
25

26 21. Staff further recommends the following:

- 27 (a) that Applicant be ordered to comply with all Commission rules, orders, and
28 other requirements relevant to the provision of intrastate telecommunications
services;

DOCKET NO. T-20377A-05-0484

- 1 (b) that Applicant be ordered to abide by the quality of service standards that were
2 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
3 (c) that Applicant be required to notify the Commission immediately upon
4 changes to Applicant's name, address, or telephone number; and
5 (d) that Applicant be ordered to cooperate with Commission investigations
6 including, but not limited to customer complaints.

7 22. Staff's recommendations, as set forth herein, are reasonable.

8 23. Applicant's fair value rate base is determined to be zero for purposes of this
9 proceeding.

10 CONCLUSIONS OF LAW

11 1. Applicant is a public service corporation within the meaning of Article XV of the
12 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

13 2. The Commission has jurisdiction over Applicant and the subject matter of the
14 application.

15 3. Notice of the application was given in accordance with the law.

16 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
17 Certificate to provide competitive telecommunications services.

18 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
19 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
20 in its application.

21 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
22 private line and intrastate access services in order to supply transport and backhaul
23 telecommunications services in Arizona as conditioned by Staff's recommendations to other carriers,
24 including but not limited to wireless telecommunications services providers and wireless information
25 services providers within the State of Arizona.

26 7. The telecommunications services that Applicant intends to provide are competitive
27 within Arizona.

DOCKET NO. T-20377A-05-048

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. The maximum rates in Applicant's proposed tariffs are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of NextG Networks of California, Inc. dba NextG Networks West for a Certificate of Convenience and Necessity for authority to provide private line and intrastate access services in order to supply transport and backbone telecommunications services to other carriers, including but not limited to wireless telecommunications services providers and wireless information services providers, within the State of Arizona shall be, and is hereby, granted, conditioned upon NextG Networks of California, Inc. dba NextG Networks West's timely compliance with the following Ordering Paragraph.

IT IS FURTHER ORDERED that NextG Networks of California, Inc. dba NextG Network West shall file with docket control, as a compliance item in this case, within 365 days of the Decision or 30 days prior to the commencement of service, whichever comes first, tariffs for each service authorized herein conforming to the tariff pages filed with its application.

IT IS FURTHER ORDERED that if NextG Networks of California, Inc. dba NextG Network West fails to meet the timeframe outlined in the Ordering Paragraph above, the Certificate of Convenience and Necessity conditionally granted herein shall become null and void after due process.

IT IS FURTHER ORDERED that NextG Networks of California, Inc. dba NextG Network West shall comply with all of the Staff recommendations set forth in Findings of Fact No. 21 above.

...

111

References

DOCKET NO. T-20377A-05-0484

1 IT IS FURTHER ORDERED that the services NextG Networks of California, Inc. dba NextG
 2 Networks West is authorized to provide herein are hereby classified as competitive.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

5
 6 *Jeffrey M. Hatch-Paella*
 7 CHAIRMAN

William T. Munk
 COMMISSIONER

8
 9 *Laurel Williams*
 10 COMMISSIONER

Tommy
 COMMISSIONER

Bryan
 COMMISSIONER

11
 12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 13 Director of the Arizona Corporation Commission, have
 14 hereunto set my hand and caused the official seal of the
 Commission to be affixed at the Capitol, in the City of Phoenix,
 this 34th day of August, 2006.

15
 16 *Brian C. McNeil*
 BRIAN C. McNEIL
 EXECUTIVE DIRECTOR

17
 18 DISSENT _____

19
 20 DISSENT _____

21 TW:aj

1 SERVICE LIST FOR: NEXTG NETWORKS OF CALIFORNIA, INC. db
2 NEXTG NETWORKS WEST
3 DOCKET NO.: T-20377A-05-0484
4 T. Scott Thompson
5 COLE, RAYWID & BRAVERMAN, LLP
6 1919 Pennsylvania Avenue, Ste. 200
7 Washington, DC 20006
8 Attorneys for NextG Networks of California, Inc.
9 Thomas H. Campbell
10 Michael T. Hallam
11 LEWIS AND ROCA
12 40 N. Central Avenue
13 Phoenix, AZ 85004
14 Christopher Kempley, Chief Counsel
15 Keith Layton, Staff Attorney
16 Legal Division
17 ARIZONA CORPORATION COMMISSION
18 1200 West Washington Street
19 Phoenix, Arizona 85007
20 Ernest G. Johnson, Director
21 Utilities Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, Arizona 85007
25
26
27
28

EXHIBIT “8”

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

NEXTG NETWORKS OF CALIFORNIA,)	
INC., d/b/a NEXTG NETWORKS)	
WEST,)	
)	
Plaintiffs,)	
)	
vs.)	No. CV2010-000832
)	
CITY OF SCOTTSDALE,)	
)	
Defendant.)	
)	
)	

DEPOSITION OF DAVID MARCEL CUTRER

Scottsdale, Arizona
September 22, 2011
11:12 a. m.

PREPARED FOR:

SUPERIOR COURT
(Original)

REPORTED BY:
AZ Litigation Support, LLC
Susan A. Grenz, RPR
Certified Court Reporter
Certificate No. 50720

AZ LITIGATION SUPPORT (480) 481-0649

1 Q. Other than NextG Networks, do you have any work
2 experience in the telecommunications industry?

3 A. Yes.

4 Q. Where else did you work in the telecommunications
5 industry?

6 A. Prior to NextG, I was with a company called LGC
7 Wireless.

8 Q. What were your job duties at LGC Wireless?

9 A. I was one of the founders of the company. I was
10 the vice president of engineering for a number of years and
11 also the chief technology officer for several years.

12 Q. Is LGC Wireless still in existence, to your
13 knowledge?

14 A. Yes. Not as an independent company so -- LGC was
15 acquired in 2007.

16 Q. Do you know who acquired LGC?

17 A. Yes.

18 Q. Who is that?

19 A. ADC Telecommunications, and a year ago ADC was
20 acquired by a company called Tyco.

21 Q. As chief technology officer for NextG, is it fair
22 to assume that you are familiar with the services that NextG
23 provides to customers?

24 A. Yes.

25 Q. What is your understanding of the general nature

1 of the services NextG provides?

2 A. Our primary service is that we provide RF
3 transport to the wireless carriers that service -- transport
4 signals from a carrier base station to a location in the
5 right of way. We also provide backhaul services as a
6 separate product.

7 Q. Do you draw a distinction between transport
8 services and backhaul services?

9 A. I draw a distinction between RF transport and
10 backhaul.

11 Q. What are the distinguishing characteristics
12 between RF transport and backhaul service?

13 A. A backhaul service is transport between a carrier
14 base station and their switch location.

15 RF transport is transport between a carrier base
16 station and where the signal is radiated to mobile users.

17 Q. Who, if any, company are you aware that NextG
18 provides strictly backhaul services to?

19 MR. THOMPSON: Objection. Form.

20 A. Can you clarify? Are you looking for an example?

21 BY MR. ANDERSON:

22 Q. If anyone that you're aware of.

23 A. Verizon.

24 Q. What location or locations in the country does
25 NextG provide backhaul services to Verizon?

1 A. Chicago.

2 Q. Are there antennas involved in that service?

3 A. No.

4 Q. Is that service strictly fiberoptic-based
5 service?

6 A. Yes.

7 Q. Is the fiberoptic-based service hooked up to any
8 antennas that Verizon has?

9 MR. THOMPSON: Object to form.

10 A. No.

11 MR. THOMPSON: Just give me a split second to
12 state an objection to the form of the question, and you'll
13 just answer unless I tell you otherwise. You answered, and
14 I think you said, "No."

15 THE WITNESS: I said, "No."

16 BY MR. ANDERSON:

17 Q. What is your understanding of the service that --
18 backhaul service that NextG provides to Verizon in Chicago?

19 A. It's the same as I described. So we connect our
20 fiber to their base station equipment back to a switch
21 location.

22 Q. And what is the definition of switch location?

23 A. Probably the best way to explain it is it's the
24 point at which in the carrier's network they connect their
25 signals to the broader either PSTN or internet connections.

1 Q. And when you use the term "PSTN," are you using
2 that as an acronym for public switch telephone network?

3 A. Yes.

4 Q. So if I understand correctly, the backhaul
5 service that NextG provides to Verizon in Chicago is
6 ultimately interconnected with the public switch telephone
7 network?

8 MR. THOMPSON: Object to form.

9 A. Ultimately, but that's not the service we
10 provide. So we're providing the transport from the base
11 station to the switch.

12 BY MR. ANDERSON:

13 Q. And what is the base station in the context of
14 the service provided in Chicago?

15 A. Meaning what is a base station?

16 Q. Right.

17 A. It is a piece of equipment that our customers use
18 that takes information, data, and puts it into a signal
19 format that can be radiated to mobile subscribers.

20 Q. In the case of the Chicago example, is the base
21 station owned by Verizon?

22 A. I believe so.

23 Q. And that base station that is owned by Verizon,
24 does that have an antenna as part of its makeup?

25 MR. THOMPSON: Objection. Asked and answered.

1 A. I believe so.

2 BY MR. ANDERSON:

3 Q. Is my understanding correct that NextG doesn't
4 have any ownership of that base station as far as the
5 Chicago network?

6 A. Correct.

7 Q. Do you know who is responsible for transmitting
8 and receiving the RF signals at that base station in
9 Chicago?

10 A. I believe it's Verizon.

11 Q. What type of telecommunication signal does NextG
12 transport in Chicago for Verizon?

13 MR. THOMPSON: Object to form.

14 A. Can you clarify the question?

15 BY MR. ANDERSON:

16 Q. Sure. In terms of is NextG transporting a
17 fiberoptic signal or a radio frequency signal?

18 A. A fiber signal.

19 Q. So in that situation, that's -- strike that.

20 You identified that as a backhaul service; is
21 that correct?

22 A. Correct.

23 Q. And in that situation, Verizon has a base
24 station; is that correct?

25 A. Correct.

1 Q. And then NextG has equipment that converts the
2 radio frequency signal to a fiberoptic signal; is that
3 correct?

4 A. Ask that again.

5 Q. Does NextG have equipment that it uses in the
6 Chicago deal with Verizon that converts a radio frequency
7 signal to an optic signal?

8 A. No. That's what the carrier base station does.

9 Q. In what format in terms of RF or optical does
10 NextG receive the signal from Verizon?

11 MR. THOMPSON: Object to form.

12 A. It's not an RF signal that we receive.

13 BY MR. ANDERSON:

14 Q. It's already converted to an optic signal?

15 A. Correct.

16 Q. When Next G receives the signal, where is the
17 signal transported to?

18 A. Well, if you're -- it's bi-directional. If
19 you're at the base station, it gets transported to the
20 switch. If you're at the switch, it gets transported to the
21 base station.

22 Q. Okay. And the switch, is that equipment owned by
23 NextG or Verizon?

24 A. Verizon.

25 Q. And at the switch -- if a signal is transported

1 from the base station to the switch, is it converted to a
2 different type of signal when it reaches the switch?

3 A. Not by NextG.

4 Q. To your knowledge, is it converted to a different
5 type of signal by Verizon or some other provider?

6 A. Well, yes. The function of the switch is to take
7 those signals and process them and convert them into signals
8 that can interface with the PSTN or other telecom services.

9 Q. But in the case of the Chicago agreement with
10 Verizon, NextG doesn't convert any signals; is that correct?

11 A. Correct.

12 Q. So is my understanding correct that in the
13 Chicago deal with Verizon, the sole function of NextG is
14 fiberoptic cable from one point to another?

15 A. Primarily.

16 Q. Are there any other functions that NextG does in
17 its agreement with Verizon in Chicago?

18 A. No.

19 Q. I have seen a reference in some filings to
20 something called a point to-point service. Are you familiar
21 with that?

22 A. Generally.

23 Q. Is what we just described about NextG's service
24 provided to Verizon in Chicago considered a point-to-point
25 service?

1 MR. THOMPSON: Object to form.

2 A. I would say so.

3 BY MR. ANDERSON:

4 Q. Are you aware of any other types of services that
5 would come under the classification of point-to-point
6 service?

7 A. There are many, yes.

8 Q. Does NextG offer any other type of service that
9 would fall under the classification of point-to-point
10 service?

11 MR. THOMPSON: Object to form.

12 A. I haven't thought about it.

13 BY MR. ANDERSON:

14 Q. NextG offers distributed antenna systems as part
15 of a service it offers; is that correct?

16 A. Well, distributed antenna system is a generic
17 name for a certain kind of architecture. The service that
18 we offer is what we call an RF transport service.

19 Q. In terms of backhaul service, are you familiar
20 with that term?

21 MR. THOMPSON: Objection to form.

22 A. Yes.

23 BY MR. ANDERSON:

24 Q. What is your understanding of the term "backhaul
25 service"?

1 MR. THOMPSON: Objection to form. I think you
2 literally asked him that about ten minutes ago.

3 But you can answer it.

4 A. The same question. That's the service that
5 transports service from a base station to a switch.

6 BY MR. ANDERSON:

7 Q. I apologize if I asked you that before. I just
8 want to clarify if there's any distinction between a
9 backhaul service and a point-to-point service.

10 MR. THOMPSON: Objection to form.

11 A. Is that a question?

12 BY MR. ANDERSON:

13 Q. Yes. Let me rephrase it.

14 Do you draw any distinction between a backhaul
15 service and a point-to-point service?

16 A. From my perspective, a backhaul service is what I
17 just described. A point-to-point service is a very generic
18 term that would apply to many kinds of services.

19 Q. Okay.

20 A. I wouldn't use that term, but you asked, so --

21 Q. Just so I'm understanding and we're on the same
22 page, you would characterize the service that NextG offers
23 to Verizon in Chicago as a backhaul service?

24 A. Yes.

25 Q. Are there any other locations in the country that

1 you're aware of where NextG provides what you would term as
2 a backhaul service?

3 A. We have -- not operational.

4 Q. Is there something that you have in the works?

5 A. We have some other deals in the works.

6 Q. Do you have any potential deals in the works for
7 the State of Arizona to provide backhaul service?

8 A. Not to my knowledge.

9 Q. The base station that you referred to as Verizon
10 having in Chicago that NextG hooks up its fiberoptic to, is
11 that the same thing as a macro cell?

12 MR. THOMPSON: Object to form.

13 A. Yes.

14 BY MR. ANDERSON:

15 Q. Does NextG's DAS service utilize any macro cells?

16 A. Can you clarify the question?

17 Q. Sure. Let me back up for a minute.

18 We've referred to something called a distributed
19 antenna system. Agreed?

20 A. Agreed.

21 Q. And you've indicated, I think, that distributed
22 antenna system is kind of a generic term; is that correct?

23 A. Correct.

24 Q. Is there an industry technical term that you
25 would subscribe to the service that NextG is currently

1 antenna.

2 BY MR. ANDERSON:

3 Q. Okay.

4 A. I mean, I happen to know Verizon uses an antenna,
5 but we have nothing to do with that.

6 Q. When a signal reaches the Verizon antenna from a
7 wireless customer in Chicago, the signal is then converted
8 to a fiberoptic; is that correct?

9 MR. THOMPSON: Object to form.

10 A. No. In that system, you have the free space
11 signals, they're converted at the antenna to an electrical
12 RF signal, and then those are connected to the Verizon base
13 station.

14 BY MR. ANDERSON:

15 Q. And at the Verizon base station, it's converted
16 to a fiberoptic signal; is that correct?

17 A. Yes, and then connected to our fiber.

18 Q. Where is the demarcation point between Verizon
19 and NextG in that scenario?

20 A. Between the base station and the fiber.

21 Q. So going back to the Pima County services, is
22 there anything different about the end user's phone call in
23 terms -- strike that.

24 In terms of the actual end user wireless phone
25 customer, is there anything different about the way they

1 will use their phone, whether it be used in the Chicago
2 model that we talked about versus the Pima County model?

3 A. From the end user, no.

4 Q. So that's all just a matter of how the signals
5 are handed off after the end user talks into the phone; is
6 that correct?

7 A. Correct.

8 Q. Are you familiar with something called a BTS?

9 A. Yes.

10 Q. What is your understanding of a BTS?

11 A. A BTS is an acronym for what people call a base
12 transceiver station. Earlier we've been talking about a
13 base station. That's shorthand for a BTS, same thing.

14 Q. In terms of a -- are you familiar with land-line
15 service?

16 A. Generally.

17 Q. Are you familiar with equipment known as T1?

18 A. Yes.

19 Q. What is your understanding of T1?

20 A. T1 is a data transport service.

21 Q. Are you familiar with just regular copper wire
22 service?

23 A. Yes, generally.

24 Q. Is copper wire the method that phone service was
25 traditionally done in?

1 BY MR. ANDERSON:

2 Q. If AT&T were to decide it wanted to provide its
3 own antenna rather than use NextG's, would that be
4 technically feasible?

5 MR. THOMPSON: Objection to form.

6 A. Technically feasible, yes. But that wouldn't --
7 that would then not fall into the category of service that
8 we provide.

9 It would also prevent us from serving other
10 wireless customers on that antenna, which is commercially
11 unattractive.

12 BY MR. ANDERSON:

13 Q. So if I understand correctly, it's technically
14 feasible but not practical from a business standpoint; is
15 that correct?

16 MR. THOMPSON: Objection to form.

17 A. I'm just saying that's not the service we
18 provide. A lot of things are technically feasible.

19 BY MR. ANDERSON:

20 Q. In the Chicago model that we talked about where
21 NextG just provides backhaul service, your understanding is
22 that Verizon has its own antenna; is that correct?

23 A. That's my understanding, yes.

24 Q. What are the -- in terms of technical terms,
25 other than who owns the equipment or controls the equipment,

1 they're talking about a traditional cell site, which is
2 meant to cover a larger area and typically would have larger
3 antennas.

4 Q. So the larger antenna, would that mean higher
5 power?

6 A. Generally, yes.

7 Q. Other than the power output, is there any
8 distinctive technical distinction between a macro cell
9 antenna and a NextG node antenna?

10 A. Yes, many.

11 Q. Okay. What are the general distinctions between
12 the macro site antenna and the NextG node antenna?

13 A. Are you referring specifically to the antenna
14 or --

15 Q. Right, just the antenna.

16 A. Okay. A higher power and -- for the types of
17 antennas that are put on right-of-way poles, there are often
18 size restrictions, esthetic restrictions. A lot of antennas
19 that go on right-of-way poles are what are called omni
20 antennas, which means they radiate in a 360-degree pattern
21 as opposed to a macro site, which often has a directed
22 antenna beam.

23 Q. In terms of technical specifications, though,
24 like functionality or receiving and transmitting RF signals,
25 other than directional and omni, are there any specific

1 differences between a macro cell antenna and a micro cell
2 antenna, as it might be called, other than power?

3 MR. THOMPSON: Objection to form.

4 A. So would I say power, size, pattern, which you
5 mentioned. I would say those are the major differences.

6 BY MR. ANDERSON:

7 Q. The previous testimony that I've heard is that at
8 the NextG node, there's an electronics conversion box; is
9 that correct?

10 MR. THOMPSON: Objection to form.

11 A. Can you clarify what you mean by that?

12 BY MR. ANDERSON:

13 Q. No. Let me ask this a different way.

14 A. I'm not sure what that --

15 Q. Once the signal reaches the antenna from a
16 hand-held wireless, it's then converted from free space RF
17 to electrical RF, correct?

18 A. Correct.

19 Q. And then it goes to coaxial cable to another
20 device; is that correct?

21 A. Correct.

22 Q. What is the next device that that signal is
23 received by?

24 A. It's a device that takes the electrical RF signal
25 and puts it onto an optical carrier.

1 that aren't wireless providers?

2 A. Yes. We've sold some of our fiber assets to
3 other telecommunication companies.

4 Q. Is that strictly in terms of backhaul service?

5 A. I wouldn't call it backhaul because a lot of
6 times the application is between enterprise customers, so
7 it's more -- it's more Ethernet service.

8 Q. Are you familiar with an industry term called
9 "dark fiber"?

10 A. Yes.

11 Q. What is your understanding of that term?

12 A. It's a term used where people either sell or
13 purchase the right to use a fiber asset, generally some
14 number of strands of fiber, for whatever purpose they want
15 to use it for.

16 Q. In the case of a dark fiber, is it -- strike
17 that.

18 Does NextG have any customers where it strictly
19 provides a dark fiber service?

20 A. Yes.

21 Q. What areas of the country do you provide that
22 service in?

23 A. As an example, Southern California.

24 Q. In the case of dark fiber service that NextG
25 provides, does NextG at any point in time have

1 responsibility or control over the signal?

2 A. No.

3 Q. Is that a characteristic of dark fiber service
4 where the dark fiber provider never assumes control over the
5 signal?

6 A. I would say that's true.

7 MR. ANDERSON: Let's mark this.

8 (Deposition Exhibit Number 6 was marked for
9 identification.)

10 BY MR. ANDERSON:

11 Q. I show you what's marked as Exhibit 6 to the
12 testimony here today, and if you would please tell me if you
13 recognize that document.

14 A. Not specifically, but I'm generally familiar with
15 this.

16 Q. Do you recognize this as a drawing of possible
17 NextG service that would be provided?

18 A. I do.

19 Q. Do you know if you had any participation in
20 creating this drawing?

21 A. I don't recall.

22 Q. Does the first page of the drawing, does that
23 depict a typical NextG node?

24 A. Yes, in a particular kind of installation.

25 Q. Are you able to identify where the antenna is on

EXHIBIT “9”

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

NEXTG NETWORKS OF CALIFORNIA,)
INC., d/b/a NEXTG NETWORKS)
WEST,)

Plaintiffs,)

vs.)

No. CV2010-000832

CITY OF SCOTTSDALE,)

Defendant.)

DEPOSITION OF ROBERT DELSMAN

Scottsdale, Arizona

September 22, 2011

9:06 a. m.

PREPARED FOR:

REPORTED BY:

AZ Litigation Support, LLC

Susan A. Grenz, RPR

Certified Court Reporter

Certificate No. 50720

AZ LITIGATION SUPPORT (480) 481-0649

Robert Delsman NextG vs Scottsdale September 22, 2011

1 A. City of Scottsdale, any municipality that wanted
2 to offer Wi-Fi services and desired connectivity through
3 fiber, for instance, operating an unlicensed spectrum range.

4 Q. Does NextG provide Wi-Fi services?

5 MR. THOMPSON: Objection to form.

6 A. No.

7 BY MR. ANDERSON:

8 Q. So if NextG doesn't provide Wi-Fi services, how
9 would a city that's interested in providing Wi-Fi services
10 utilize NextG's services?

11 A. The city itself would be the Wi-Fi provider where
12 they're acting as an ISP itself or in conjunction with
13 another entity ISP.

14 NextG would provide the transport service to the
15 pipeline that would connect the Wi-Fi and allow transmission
16 of a large quantity of data over fiber, and it's a common
17 arrangement for NextG in its municipal agreements to offer
18 that capacity.

19 Q. Have you ever heard of a term called a "dumb
20 pipe?"

21 A. No.

22 Q. Have you ever heard of the term "dark fiber"?

23 A. Yes.

24 Q. What is your understanding of the term "dark
25 fiber"?

Robert Delsman NextG vs Scottsdale September 22, 2011

1 A. Dark fiber means the sale or lease of fiberoptic
2 strands or capacity without any telecommunication services
3 associated with that transaction.

4 Q. In the context that you just used it, what is
5 your understanding of the term "telecommunications"?

6 MR. THOMPSON: Objection to form.

7 A. Telecommunications as I just used it essentially
8 is the transmission for hire by a telecommunications
9 provider of a signal without change in protocol or form of
10 that signal to and from the place of the customer's
11 choosing, and I may not have quoted that precisely, but I'm
12 attempting to recite essentially the federal definition of
13 telecommunications.

14 BY MR. ANDERSON:

15 Q. Okay. Are you familiar with NextG's services
16 being provided at Arizona State University?

17 A. Yes.

18 Q. Are those services being provided at Arizona
19 State University substantially the same as those in Pima
20 County?

21 A. No.

22 Q. What's different about the services at Arizona
23 State than those being provided in Pima County?

24 A. Well, let me retract that last statement. I
25 think I need to change it to a yes.

Robert Delsman NextG vs Scottsdale September 22, 2011

1 by the customer.

2 Q. So at the node the transmission of the signal is
3 controlled by the customer?

4 A. Correct.

5 Q. Is the hand-off process at the same location for
6 the reverse?

7 A. Yes.

8 Q. So the hand-off would occur at BTS; is that
9 correct?

10 A. Yes.

11 Q. So in this instance, if it's a call going to the
12 hand-held mobile customer of Verizon, there will be a
13 hand-off from Verizon to NextG at the BTS; is that correct?

14 MR. THOMPSON: Object to form.

15 A. The hand-off from Verizon to NextG occurs, yes,
16 at the BTS, at the demarcation point, but NextG doesn't know
17 anything about the signal or where it's going. NextG is
18 transporting the signal without interference in terms of
19 change or protocol or form.

20 BY MR. ANDERSON:

21 Q. When you use the term "transporting," what is
22 NextG doing to transport that signal?

23 A. It's carrying the signal from the BTS to the
24 remote node where the signal is propagated by the customer.

25 Q. Okay. And the transport from the BTS to the

Robert Delsman NextG vs Scottsdale September 22, 2011

1 remote node, is that different than transmitting the signal
2 or is that synonymous?

3 A. It is.

4 Q. It's synonymous?

5 A. No, it's different.

6 Q. What's different between transporting a signal
7 and transmitting a signal?

8 A. Transport simply means carrying -- in our world,
9 carrying from point A to point B which the customer has
10 specified.

11 Transmission would involve control of the signal
12 itself and the ability to direct, transmit, and receive
13 where that's going and to whom and under what conditions.

14 Q. So just for clarification purposes, when you
15 indicated demarcation point, is that synonymous with a
16 hand-off between two carriers?

17 MR. THOMPSON: Objection to form.

18 A. Yes.

19 BY MR. ANDERSON:

20 Q. So when we talked about where the hand-off point
21 is, that would be the same thing as saying where there's a
22 demarcation point?

23 A. Correct.

24 Q. So you've identified, if I understand correctly,
25 that there's a demarcation point at the BTS where the

Robert Delsman NextG vs Scottsdale September 22, 2011

1 BY MR. ANDERSON:

2 Q. So if NextG is relieved of responsibility to
3 handle the signal, why does NextG need an antenna for its
4 service?

5 A. In order to facilitate the transmission which
6 occurs at the end of the antenna, not the beginning of the
7 antenna.

8 Q. Is NextG acting as an agent on the behalf of a
9 customer at that point in time?

10 A. Not to my knowledge.

11 Q. What is it about NextG's service that is
12 necessary to facilitate the customer's broadcast of the RF
13 emission from the antenna?

14 MR. THOMPSON: Object to form.

15 A. Could you rephrase that?

16 BY MR. ANDERSON:

17 Q. You've indicated that the antenna is integral to
18 NextG's service; is that correct?

19 A. Uh-huh.

20 MR. THOMPSON: That was a yes?

21 THE WITNESS: Yes.

22 MR. THOMPSON: You went uh-huh. Make sure you
23 say yes.

24 BY MR. ANDERSON:

25 Q. But you've also indicated that all of the RF

Robert Delsman NextG vs Scottsdale September 22, 2011

1 emissions from the antenna are broadcast by the customer and
2 not NextG; is that correct?

3 A. Correct.

4 Q. What part of NextG's responsibility for handling
5 the signal requires that antenna?

6 A. The requirement of the antenna is, as I believe I
7 said, a prerequisite for the ability of the customer to emit
8 the signal that we have converted.

9 Q. Correct. It's for the customer to handle that
10 signal, right, at the antenna point?

11 A. Correct.

12 Q. Leaving aside the customer's handling of the
13 signal, what is integral to NextG's service about the
14 antenna?

15 MR. THOMPSON: Objection. Asked and answered.

16 A. I think I've explained to the best of my ability.
17 If there's something --

18 BY MR. ANDERSON

19 Q. Is that something that Mr. Cutrer might be better
20 able to explain?

21 A. Probably.

22 MR. ANDERSON: I don't have any more questions.

23

24

25

EXHIBIT “10”

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

NEXTG NETWORKS OF CALIFORNIA,)
INC., d/b/a NEXTG NETWORKS)
WEST,)

Plaintiff,)

vs.)

No. CV2010-000832

CITY OF SCOTTSDALE,)

Defendant.)

THE DEPOSITION OF CARL CABICO

Scottsdale, Arizona

September 21, 2011

10:36 a.m.

(ORIGINAL)

PREPARED FOR:

SUPERIOR COURT

REPORTED BY:

Marty Herder, CCR
Certified Court Reporter
CCR No. 50162

1 antennas are part of NextG's network?

2 MR. THOMPSON: Objection; form.

3 THE WITNESS: Yes.

4 BY MR. ANDERSON:

5 Q. What's your understanding?

6 A. NextG owns the antennas, and we install antennas.

7 Q. The system that you installed at Arizona State
8 University, do you have any understanding as to how radio
9 frequency signals are transmitted from that system?

10 A. I have a basic understanding.

11 Q. Okay. What's your basic understanding?

12 A. Our customer's radio equipment is connected on one
13 end. It interfaces to the DAS system. So the customers,
14 I'll call it a hub location, the customer's radio equipment
15 injects a signal into the DAS system, which consists of the
16 fiberoptic cable that NextG constructs, and that signal is
17 transported over NextG's fiberoptic cable to the remote end
18 where that signal is remotely controlled by the customer's
19 equipment at the hub, and the signal is -- goes out the
20 antenna, and vice versa, in reverse direction.

21 Q. What's your understanding of who NextG's customers
22 are?

23 A. NextG's customers are any perspective customers
24 who have a need to use our transport services over our
25 fiberoptic networks.

1 Q. Do you know any specific customers that you've
2 dealt with?

3 A. Currently, ASU. We're dealing with AT&T and
4 Verizon as our initial two customers there.

5 Q. Do you understand, let's take Verizon for example.
6 Do you understand Verizon to be a provider of
7 wireless services on a retail basis?

8 A. From my understanding, yes, Verizon is.

9 Q. And do you understand that Verizon would typically
10 have mobile phone subscribers as its customers?

11 A. Yes.

12 Q. Is NextG's equipment designed to receive signals
13 from Verizon's mobile phone customers?

14 MR. THOMPSON: Object to form.

15 THE WITNESS: Not our company, because our
16 equipment is the fiberoptic jumpers and cable.

17 The equipment that accepts the subscriber service
18 is owned by, in this case, Verizon.

19 Q. What, specifically -- is there a name that's
20 ascribed to that equipment?

21 A. It would be the optical equipment at the remote
22 node end.

23 And then also the BTS equipment at the hub.

24 Q. Is BTS an acronym for something?

25 A. I believe it stands for base transmission system.

1 Q. You referred to a remote node; is that correct?

2 A. Yes.

3 Q. What equipment, in your understanding, comprises a
4 remote node?

5 A. It would be the power supply that could be
6 electric meter or a fuse that powers the site, a battery
7 back-up unit, if there is one for that particular site. And
8 there is the electronics box that converts RF to light
9 signal, and vice versa.

10 And there is the fiberoptic cable, the coax cable,
11 and the antenna.

12 Q. What is the function of the antenna at the remote
13 node?

14 A. The antenna serves as a -- it receives and
15 transmits the RF signal.

16 Q. Okay.

17 A. Or I would just say it receives and transmits --
18 receives a signal.

19 Q. When you say RF signal, you're referring to a
20 radio frequency signal; is that correct?

21 A. Yes.

22 Q. And what is your understanding of which company
23 transmits and receives the RF signals to and from the
24 antenna?

25 A. It would be the wireless provider, AT&T or

1 Verizon.

2 Q. Do you have an understanding as to who owns that
3 antenna?

4 A. Yes.

5 Q. And what's your understanding as to who owns that
6 antenna?

7 A. In the majority of the cases, I believe NextG owns
8 the antenna, but there might be some early contracts that I
9 don't know specifically who owns the antenna, but in most
10 cases NextG owns that antenna.

11 Q. Are you familiar with an industry term known as a
12 demarcation point?

13 MR. THOMPSON: Objection to form.

14 THE WITNESS: Yes.

15 BY MR. ANDERSON:

16 Q. What is your understanding of the industry's use
17 of the term demarcation point?

18 MR. THOMPSON: Objection to form.

19 THE WITNESS: The hand-off of the responsibility
20 from one company to the next company.

21 BY MR. ANDERSON:

22 Q. And is there a demarcation point that you're aware
23 of on the typical NextG node?

24 MR. THOMPSON: Objection to form.

25 THE WITNESS: Yes.

1 system at this point.

2 Q. To your knowledge, are the antennas that are part
3 of the DAS system, that NextG installed in Pima County, are
4 those transmitting and receiving radio frequency signals?

5 A. From what I understand, they are transmitting and
6 receiving signals.

7 Q. Do you have any understanding as to whether or
8 not those radio frequency signals that are being transmitted
9 and received in Pima County are within the spectrum of radio
10 frequency that's required to be licensed by the FCC?

11 A. From what I understand, the RF signals are
12 licensed to AT&T and they're using licensed frequencies
13 through the FCC.

14 Q. Do you have any understanding as to whether NextG
15 is authorized by AT&T to have its antennas transmit those
16 frequencies that are within licensed spectrum?

17 MR. THOMPSON: Objection; form.

18 THE WITNESS: For clarification, NextG isn't
19 transmitting the signal to the antennas.

20 BY MR. ANDERSON:

21 Q. Okay.

22 A. AT&T is transmitting the signal through the
23 antennas.

24 BY MR. ANDERSON:

25 Q. So is it fair to say, then, that NextG doesn't

1 really need an antenna if it's not transmitting any signals
2 to and from that antenna?

3 MR. THOMPSON: Objection to form.

4 THE WITNESS: Well, NextG doesn't need the
5 antenna, but AT&T needs the antenna to transmit their
6 signals.

7 Q. So the antenna is just something NextG is putting
8 in for the benefit of its customers; is that correct?

9 A. Yes.

10 Q. NextG just does fiberoptic transport?

11 MR. THOMPSON: Objection to form.

12 THE WITNESS: Yes.

13 BY MR. ANDERSON:

14 Q. So if NextG -- if a customer said we'll put in our
15 own antenna, NextG's system would still operate as long as
16 that antenna was hooked up to NextG's fiberoptic transport?

17 MR. THOMPSON: Objection; form.

18 THE WITNESS: If the perspective customer put in
19 their transmission equipment, then they would be
20 transmitting their signal through our fiberoptic network.

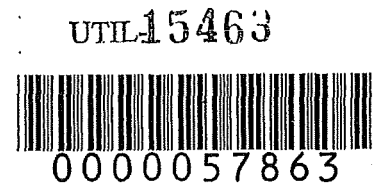
21 BY MR. ANDERSON:

22 Q. So, just so I'm clear, the antenna that is
23 installed as part of the DAS system, that's something that's
24 strictly for the customers' use, not for NextG's use?

25 MR. THOMPSON: Object to form.

EXHIBIT “11”

T-20377A-05-0484
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OPEN MEETING ITEM



1 BEFORE THE ARIZONA CORPORATI

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3 IN THE MATTER OF THE APPLICATION) DOCKET NO.
4 OF NEXTG NETWORKS OF CALIFORNIA,) T-20377A-05-0484
5 INC. dba NEXTG NETWORKS WEST FOR A)
6 CERTIFICATE OF CONVENIENCE AND)
7 NECESSITY FOR TRANSPORT AND BACKHAUL)
8 SERVICES TO OTHER CARRIERS, INCLUDING)
9 BUT NOT LIMITED TO WIRELESS)
10 TELECOMMUNICATIONS SERVICES PROVIDERS)
11 AND POTENTIALLY TO WIRELESS)
12 INFORMATION SERVICES PROVIDERS.)
13

9

10

11 At: Phoenix, Arizona

12 Date: July 27, 2006

13 Filed: AUG 15 2006

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Arizona Corporation Commission
DOCKETED
AUG 15 2006

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24 Prepared for:

25 ACC

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1 MR. THOMPSON: Your Honor, we make Mr. Delsman
2 available for cross at this time.

3 ALJ WOLFE: Thank you.

4 Mr. Layton, do you have questions for this
5 witness?

6 MR. LAYTON: Just a couple, Your Honor. Thank
7 you.

8

9 CROSS-EXAMINATION

10

11 Q. (BY MR. LAYTON) Good afternoon, Mr. Delsman.

12 A. Good afternoon.

13 Q. Could you briefly describe the various services
14 that the company is requesting to provide?

15 A. The company is requesting to provide what
16 essentially, I believe, in Arizona is characterized as
17 private line service. It is what we call, as a sort of
18 trademark for marketing to our customers, RF Transport,
19 which is essentially a service -- a telecommunications
20 service provided as a carrier's carrier to other
21 telecommunications carriers. It could be RF Transport
22 or backhaul, or it might be service offered to an
23 information service provider.

24 But most of our business is provision of this
25 service to the limited universe of CMRS carriers, that